

1927

c 95 Division Courts Act

Ontario

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CHAPTER 95.

The Division Courts Act.

INTERPRETATION.

1.—(1) In this Act, —

Interpretation

- (a) "Action" shall include a proceeding, suit, matter and cause; "Action."
- (b) "County" shall include provisional county and provisional judicial district; "County."
- (c) "County Court" shall include district court; "County Court."
- (d) "Defendant" shall include primary debtor; "Defendant."
- (e) "Division" shall mean the territory in and for which a division court is established; "Division."
- (f) "Inspector" shall mean the Inspector of Division Courts; "Inspector."
- (g) "Judge" shall mean and include the judge and a junior judge of the county court of the county in which the division for which a division court is constituted is situate; "Judge."
- (h) "Judgment creditor" shall include a creditor who has obtained judgment against a garnishee; "Judgment creditor."
- (i) "Judgment debtor" shall include a garnishee against whom judgment has been recovered; "Judgment debtor."
- (j) "Plaintiff" shall include primary creditor; "Plaintiff."
- (k) "Prescribed form" shall mean the form prescribed by this Act or by the general rules or orders relating to division courts. "Prescribed Form."

(2) Where in this Act, any power or authority is conferred or any duty is imposed upon the judge of the county court, it shall be exercised or performed by him and not by a junior judge. R.S.O. 1914, c. 63, s. 2. Exclusive powers of county judge

2. Part I, except where otherwise therein provided, shall apply to every county and provisional judicial district in Ontario. Part II shall be applicable only to provisional judicial districts. R.S.O. 1914, c. 63, s. 3. Territorial application of parts of Act.

PART I.

APPLICABLE BOTH TO COUNTIES AND DISTRICTS.

THE COURTS.

Courts continued.

3. The division courts, as existing at the time this Act takes effect, shall continue. R.S.O. 1914, c. 63, s. 4.

Number of courts in each county.

4. There shall be not less than three nor more than twelve division courts in each county, of which there shall be at least one in each city and county town. R.S.O. 1914, c. 63, s. 5.

Designation of clerk.

5. The court in each division shall be called "The First (or as the case may be) Division Court of the County of . . ." R.S.O. 1914, c. 63, s. 6.

Each court to have a seal.

6. Every court shall have a seal, with which all process shall be sealed or stamped, and which shall be paid for out of the Consolidated Revenue Fund. R.S.O. 1914, c. 63, s. 7.

To be courts of record.

7. The court shall be a court of record. R.S.O. 1914, c. 63, s. 8.

Place of office of clerk.

8. The Lieutenant-Governor in Council may designate the place within the division where the office of the clerk shall be situated. R.S.O. 1914, c. 63, s. 9.

Time and place of holding courts.

9.—(1) A sittings of the court shall be held in each division once in every two months, or oftener in the discretion of the judge who presides over the division courts of the county, and the judge may appoint and from time to time alter the times and places for holding such courts, and shall notify the clerk thereof.

The Lieutenant-Governor may, in certain cases, regulate holding of courts.

(2) If the judge of the county court, the sheriff and the inspector, or any two of them, certify to the Lieutenant-Governor that, in any division of the county, it is expedient that the court should not be held so often as once in every two months, the Lieutenant-Governor in Council may order the court to be held at such periods as to him seems meet, but a court shall be held in the division at least once in every six months. R.S.O. 1914, c. 63, s. 10.

Holding of courts in cities, offices of clerks therein.

10. In any city in which two division courts are established, all or any of the sitting of both such courts may be held in either of such divisions, and the clerks of both courts may, with the approval of the Lieutenant-Governor in Council, keep their offices in the same division. R.S.O. 1914, c. 63, s. 11.

11. Each of the courts for divisions within the City of Toronto shall, except during the month of August, hold sittings as follows:— Sittings in Toronto.

- (a) At least weekly for the trial of actions;
- (b) At least monthly for the hearing of judgment summonses; and
- (c) At least once in every two months for the trial of actions where juries have been demanded. R.S.O. 1914, c. 63, s. 12.

12.—(1) The local municipality in which a division court is held shall provide a court room, not in or connected with an hotel, and other necessary accommodation for holding the court. Division courts accommodation.

(2) If a proper court room and other necessary accommodation are not furnished by the municipality, the judge may hold the court in any suitable place in the division, or in any other division of the county in which suitable accommodation is provided, and the owner, lessee or tenant of the building in which the court is held shall be entitled to receive from the municipality whose duty it was to provide proper accommodation for the court the sum of \$5 for every day on which the court is held in the building. If there be no proper court room, etc., the judge may hold court in any suitable place. Expenses for rent.

(3) Where a municipality not being a city or town, furnishes a court room and other necessary accommodation, or pays for the use of any building, the municipality shall be entitled to recover from any other municipality the whole or part of which is within the division, for which the court is held such reasonable share of the cost as shall be ordered by the judge of the court to be paid and contributed by the last mentioned municipality, and in every such case the total cost shall be deemed to be \$5 for every day on which the court is held. R.S.O. 1914, c. 63, s. 13. Judge to apportion costs in certain cases.

(4) Where in any division the clerk and bailiff are paid for attending court sittings by the local municipality in which the division court is held, under the provisions of subsection 4 of section 41, such local municipality shall be entitled to recover from any other municipality for which the court is held, such reasonable share of the amount so paid to the clerk and bailiff as shall be ordered by the judge. 1927, c. 32, s. 2. Right of Municipalities to reimbursement for fees paid officers.

13. The sittings of the court in a county town may be held in the court house. R.S.O. 1914, c. 63, s. 14. Use of court house.

14.—(1) In a county the judge of the county court, the sheriff, the warden and the inspector, and in a provisional judicial district the judge of the district court, the sheriff and the inspector shall be a board who may appoint and alter the number and limits of the divisions, and shall number the divisions beginning at number 1. Board for determining the number and limits of divisions.

Board in provisional county.

(2) In a provisional county the judge of the county court and the sheriff of the county of which the provisional county forms a part for judicial purposes, the inspector and the warden of the provisional county shall constitute the board. R.S.O. 1914, c. 63, s. 15 (1, 2).

Meeting of board.

(3) No resolution or order altering the number or limits of the divisions or any of them shall be made, except at a meeting called for that purpose, of which four weeks' notice shall be given by publication in a newspaper published in the division affected, or if no newspaper is published there, then in a newspaper published in the county or district town of the county or district in which the division affected is situate; and the costs of such advertisement shall be paid for by the county. R.S.O. 1914, c. 63, s. 15 (3); 1916, c. 26, s. 1.

When order of board to take effect.

(4) No such resolution or order shall take effect until approved by the Lieutenant-Governor in Council nor until notice of such approval has been published in the *Ontario Gazette*.

Application for change of boundaries.

(5) An application to alter the limits of any division, or to establish a new division, may be made to the judge of the county court in writing signed by the reeve or other head of any municipality in the county, authorized by a resolution of the council in that behalf, or by a petition signed by at least twenty-five ratepayers of the municipality affected.

Procedure upon application.

(6) Upon receiving the application the judge shall notify the other members of the board, and upon receiving notice the inspector shall appoint a time and place for considering the application, of which four weeks' notice shall be given as provided by subsection 3, and at the meeting persons supporting or opposing the proposed change shall be heard if they so desire, and the board shall consider and dispose of the whole matter.

Record of proceedings.

(7) The inspector shall keep a record of the proceedings of the board and shall send a copy of it to the clerk of the peace after each meeting. R.S.O. 1914, c. 63, s. 15 (4-7).

Actions and judgments continued when transferred.

15. Actions and judgments in any court, the number or limits of which are changed, shall continue to be actions and judgments therein, but the judge may transfer any such action or judgment to any other court, and when so transferred the same shall be an action or judgment of such other court. R.S.O. 1914, c. 63, s. 16.

Clerks of the peace to record time and place for holding courts.

16. The clerk of the peace, in a book to be kept by him, shall record the divisions declared and appointed, and the times and places of holding the courts, and the alterations made therein, and he shall transmit to the inspector a copy of the record. R.S.O. 1914, c. 63, s. 17.

17.—(1) Where a union of counties is dissolved or a county is separated from a union of counties,—

Actions where united counties are dissolved.

(a) the courts of divisions which were wholly within the senior county or remaining counties and those which were wholly within the junior or separated county shall continue to be courts of the senior county or remaining counties and of the junior or separated county respectively, and all actions and judgments therein shall continue to be actions and judgments in such courts until altered by the board;

(b) actions and judgments in courts or divisions the limits of which were partly within the senior county or remaining counties and partly within the junior or separated county, shall continue to be actions and judgments of such courts until transferred to some other court in accordance with this Act.

(2) The Lieutenant-Governor in Council may in the proclamation establishing a new county, or in a subsequent proclamation, to take effect in either case from a day to be named therein, fix and determine the number and limits of the courts for the new county, subject to be thereafter altered by the board, and may by the proclamation direct that actions and judgments in any court shall become actions and judgments in any other court and thereupon the same shall become actions and judgments of and shall be continued in such last mentioned court.

Fixing number and limits of courts in a new county.

(3) Where an action or judgment in any court is transferred to another court the clerk or other officer of the court who holds any writ or document appertaining to such court or the business thereof shall deliver up the same to such person as the judge directs.

Writs and documents to be delivered up.

(4) If the Lieutenant-Governor does not by proclamation fix and determine the number and limits of the divisions for the new county, the board shall, within three months after the issuing of the proclamation for establishing the new county, at a meeting to be called for the purpose or at an adjourned meeting, appoint the number and limits of the divisions for the county and the time when such appointment shall take effect. R.S.O. 1914, c. 63, s. 18.

Power of board as to regulation of limits on separation of a county.

THE JUDGE.

18.—(1) The courts shall be presided over by the judge or the junior judge or by the deputy judge.

Who to preside.

(2) The junior judge shall preside over the courts of the county, subject to any other arrangements from time to time made with the judge of the county court or, in the county of York, by a majority of the judges.

Junior judge to hold division courts.

Senior judge to hold division courts when expedient.

(3) The appointment of a junior judge shall not prevent or excuse the judge from presiding at any of the courts within his county when the public interests require it. R.S.O. 1914, c. 63, s. 19.

Who to preside in case of illness or absence of judge.

19.—(1) The judge may appoint a barrister to act as his deputy, and the barrister so appointed shall have all the powers and privileges vested in and be subject to all the duties imposed by law upon the judge.

Provincial Secretary to be notified of appointment of deputy.

(2) The judge shall forthwith send to the Provincial Secretary notice of the appointment, specifying the name and residence of the barrister so appointed and the cause of his appointment.

Duration of appointment.

(3) No such appointment shall be continued for more than one month, and in case the Lieutenant-Governor in Council disapproves of the appointment, he may annul the same. R.S.O. 1914, c. 63, s. 20.

Adjournment of court if judge does not arrive in time.

20. If the judge does not open court on the day appointed for that purpose, the clerk shall, after four o'clock in the afternoon, adjourn the court to an hour on the following day, to be named by him, and so from day to day, adjourning over any Sunday or holiday, until the judge arrives to open court, or until other directions are received from him. R.S.O. 1914, c. 63, s. 21.

CLERKS AND BAILIFFS, ETC.

Every court to have clerk and bailiffs.

21. For every court there shall be a clerk and a bailiff or bailiffs, who shall be appointed by the Lieutenant-Governor, and all clerks and bailiffs heretofore or hereafter appointed shall hold office during the pleasure of the Lieutenant-Governor. R.S.O. 1914, c. 63, s. 22.

Tenure of office of division court officials.

Clerk not to practise as barrister, etc.

22. A clerk shall not practise as a barrister or solicitor. R.S.O. 1914, c. 63, s. 23.

Duty of judges as to officers.

23.—(1) It shall be the duty of the judge to see that the officers of his courts perform their duties, and to examine into complaints against them.

Suspensions of clerk or bailiff by judge.

(2) The judge may for any cause suspend a clerk or bailiff, and in case of suspension shall forthwith report the same and the cause thereof to the Inspector, and if a vacancy occurs in the office of clerk or bailiff, the judge shall forthwith notify the Inspector. R.S.O. 1914, c. 63, s. 24.

Leave of absence to clerks or bailiffs.

24.—(1) Leave of absence for a period not exceeding two months may be granted by the Inspector to a clerk or bailiff. R.S.O. 1914, c. 63, s. 25 (1).

(2) With the approval of the judge, when prevented from acting by illness or accident, and with the approval of the Inspector the clerk or bailiff may appoint a deputy to act for him, with all his powers and privileges and subject to like duties, and the clerk and his sureties shall be jointly and severally responsible for all the acts and omissions of his deputy; and the bailiff and his sureties shall be jointly and severally responsible for all the acts and omissions of his deputy. R.S.O. 1914, c. 63, s. 25 (2); 1914, c. 21, s. 17.

When clerk
may appoint
deputy.

25.—(1) Every clerk and bailiff shall furnish such security as may be required by the Lieutenant-Governor in Council for the due performance of the duties of his office, and, subject to section 27, the provisions of *The Public Officers Act*, relating to the giving of security, shall apply to such security.

Security by
clerks and
bailiffs.

Rev. Stat.
c. 17.

(2) Such security shall enure to the benefit of any person suffering damages by the default, breach of duty or misconduct of the clerk or bailiff. 1916, c. 26, s. 2.

Security
to enure
to benefit
of person
injured.

26.—(1) In an action against a surety of a clerk or bailiff, the entries in the books kept by such clerk or bailiff shall be *prima facie* evidence against the surety.

Entries of
clerk or
bailiff evi-
dence against
surety.

(2) For the purpose of this section the words "clerk or bailiff" shall include a person who has ceased to be a clerk or a bailiff, as the case may be. R.S.O. 1914, c. 63, s. 30.

Interpretation
of "clerk or
bailiff."

27. The Lieutenant-Governor in Council may authorize the Inspector to enter into agreements in His Majesty's name with any corporation authorized to carry on the business of fidelity insurance in Ontario, for the furnishing of the security required by section 25, and may also make regulations regarding the same. 1916, c. 26, s. 3.

Agreements
with
fidelity
company
as to
security for
clerks and
bailiffs.

Clerk's Duties.

28. The clerk shall issue all summonses and shall make copies thereof with the notices thereon, according to the prescribed form, and, except as otherwise provided by this Act, shall deliver the same to the bailiff for service. R.S.O. 1914, c. 63, s. 34.

Clerk to issue
summonses
and furnish
copies, etc.

29. The clerk shall cause a note of all summonses, notices, orders, judgments, warrants, executions and returns thereto, to be entered in a book to be kept in his office, and shall sign his name on every page of the book; and the signed entries, or a copy thereof certified as a true copy by the clerk, shall be sufficient evidence of such entries and of the proceedings referred to therein, without further proof. R.S.O. 1914, c. 63, s. 35.

Clerk to keep
a record of
process.

Books to be kept by clerks.

30.—(1) A procedure book (Form 2), and a foreign procedure book (Form 3), shall be kept by the clerk. R.S.O. 1914, c. 63, s. 36 (1).

Cost of division court books and forms.

(2) The cost of all books and forms, required by this Act to be kept by the clerk and bailiff shall be repaid to him by the treasurer of the county, upon the certificate of the inspector. 1918, e. 20, s. 16.

Forwarding summonses for service in other divisions.

31. The clerk, when required, shall forward the summons and copies for service to the clerk of any other court who shall receive and deliver them to the bailiff for service, and when returned shall send the summons to the clerk from whom it was received, and shall enter the proceedings in the foreign procedure book. R.S.O. 1914, c. 63, s. 37.

Clerks to issue executions, tax costs and keep account of fines, etc.

32. The clerk shall issue all warrants and executions; and shall tax costs, subject to revision by the judge, and shall keep an account of all fines payable or paid into court, and of all suitors' money paid into and out of court, and shall enter an account of all such fines and money in a book to be kept by him for that purpose, which shall be open to all persons desirous of searching the same, and shall at all times be accessible to the judge and the Inspector. R.S.O. 1914, c. 63, s. 38.

Fines and penalties to be paid to clerk of peace.

33. The money arising from any penalty, forfeiture or fine imposed by or under authority of this Act, not directed to be otherwise applied, shall be paid to the clerk and shall be paid by him to the clerk of the peace, to be paid over to the Treasurer of Ontario. R.S.O. 1914, c. 63, s. 39.

Clerks to deliver to clerk of peace a verified account of fines

34. The clerk shall, at least once in every three months and oftener if required by the clerk of the peace, deliver to him a full account in writing verified by affidavit of all fines levied, accounting for and deducting the reasonable expenses of levying the same, and any allowance which the judge may make out of such fines in pursuance of the power hereinafter given. R.S.O. 1914, c. 63, s. 40.

And furnish judge with a verified account of moneys paid in and out of court.

35. The clerk when required by the judge shall furnish him with a full account in writing, verified by affidavit, of the money paid into or out of the court under orders, judgments or process of the court, and of the balance in court belonging to suitors or others. R.S.O. 1914, c. 63, s. 41.

Clerk to mail notice of payment of money.

36.—(1) Immediately after the receipt of any sum of money for any person, the clerk shall forward a notice thereof by registered post, to the person entitled to receive the same; and shall obtain and file among the papers in the action the post office certificate of the registration, and shall deduct the postage from the money in his hands, but shall charge no fee for the notice.

Registration certificate to be with papers.

(2) The absence of the certificate of registration from among the papers in the action shall be *prima facie* evidence against the clerk that the notice has not been forwarded. R.S.O. 1914, c. 63, s. 42.

Effect of absence of certificate.

37.—(1) The clerk shall annually, in the month of January, make out a correct statement of all sums of money belonging to suitors or others which have been paid into court and have remained unclaimed for six years before the last day of the month of December then last past, specifying the names of the persons for whom or on whose account the same were so paid.

Clerk annually to make list of suitors' money in court for six years.

(2) The clerk shall keep one copy of the statement posted up in his office and another copy in some conspicuous part of the court house or place where the court is held, and copies shall also be sent to the Treasurer of Ontario and the Inspector. R.S.O. 1914, c. 63, s. 43 (1, 2).

List to be put up in court room and in clerk's office and sent to Treasurer of Ontario and Inspector.

(3) All such sums shall form part of the Consolidated Revenue Fund, and shall be forthwith paid over by the clerk or officer holding the same to the Treasurer of Ontario; and, except by leave of the Lieutenant-Governor in Council, no person shall be entitled to claim any such sum which has remained unclaimed for six years. R.S.O. 1914, c. 63, s. 43 (3); 1916, c. 26, s. 5.

Unclaimed moneys to be paid over to clerk of peace and by him to Treasurer of Ontario.

(4) The time during which the person entitled to claim the money was an infant or of unsound mind, or out of Ontario, shall not be taken into account in computing the six years. R.S.O. 1914, c. 63, s. 43 (4).

Claims of persons under disability not to be prejudiced.

Disposal of Books and Papers when Clerk or Bailiff changed.

38. All accounts, money, books, papers, documents, and other things in the possession of a clerk or bailiff by virtue of or appertaining to his office, shall, upon his death, resignation, or removal, immediately become the property of the clerk of the peace, who shall hold the same until the appointment of another clerk or bailiff, to whom he shall deliver over the same, when security has been furnished on behalf of such clerk or bailiff. R.S.O. 1914, c. 63, s. 44.

Upon resignation, removal or death of clerk, clerk of peace to become possessed of papers.

39. Upon the death, resignation, suspension, or removal of the clerk, the clerk of the peace shall be the clerk until a successor is appointed or the suspension is removed; and the clerk of the peace shall be paid by the corporation of the county for his services in taking over the office the sum of \$5 together with actual disbursements. R.S.O. 1914, c. 63, s. 45.

Clerk of peace to act as clerk when office of clerk is vacant.

Duties of Bailiffs.

40. The bailiff shall promptly serve and execute all summonses, orders, warrants, and executions delivered to him by the clerk, and shall so soon as served or executed return

Bailiffs to serve process.

the same to the clerk; but, subject to the provisions of section 64, he shall not be required to travel beyond the limits of his division, or be allowed to charge mileage for any distance beyond the limits of the county in which is situated the division for the court of which he is bailiff. R.S.O. 1914, c. 63, s. 46.

Fees of Clerks and Bailiffs, etc.

Clerk and
bailiffs to be
paid by fees.

41.—(1) The clerk and the bailiff shall be paid by fees, as provided and allowed by the general rules or orders heretofore in force or hereafter to be made by the Board of County Judges, and approved under the provisions of this Act.

Table of fees
to be posted up
in clerk's
office.
Fees of
appraisers.

(2) A table of the fees shall be kept posted up in some conspicuous place in the office of the clerk.

(3) Until otherwise provided by general rule or order, the fees to be taken and received by appraisers shall be as follows:—

To each Appraiser, during the time actually employed in appraising goods (*to be paid in first instance by the plaintiff and allowed as costs in the cause*)..... One dollar per day.

R.S.O. 1914, c. 63, s. 47.

(4) Where the fees and emoluments earned by a clerk or bailiff are less than \$1,000 a year, the local municipality in which the division court is held shall pay to the clerk and bailiff respectively the sum of \$4 for attending each sitting of the court. 1914, c. 2 sched. (19); 1921, c. 38, s. 1.

Cases where
amount
involved not
more than \$10.

42.—(1) Where the claim sued for, exclusive of interest and costs, does not exceed \$10, the tariff of clerk's or bailiff's fees shall not apply, except the fees for mileage to a bailiff, the fees for enforcing the warrant of attachment, warrant against the body or summons in replevin, and the fee allowed to the clerk for receiving papers from another division for service, entering the same, handing the same to the bailiff and receiving and entering his return.

Fees of clerks
and bailiffs.

(2) The fees taxable to the clerk and bailiff in an action in which the sum sued for as aforesaid does not exceed \$10 shall, except as hereinbefore provided, be as follows:—

To the clerk for any and all services rendered by him as such clerk from the time of entering the action or suing out an interpleader summons up to and including the entering of final judgment or final order on any such judgment or summons, in case the action proceeds to judgment, or final order..... \$1.25

In case the action does not proceed to judgment or final order, the fees heretofore or that may hereafter be payable, but not exceeding in the whole the said sum.

For issuing writ of execution, warrant of attachment or warrant for arrest of delinquent and entering the return thereto..... \$.50

To the bailiff for all services rendered by him as such bailiff in serving the summons and making his return thereof to the clerk of the court or any other service that may be necessary before judgment is entered by the clerk or pronounced by the judge, mileage excepted50

For enforcing writ of execution, schedule of property seized or attached, bond where necessary acts done by him after seizure, mileage excepted, if money made or case settled after levy 1.00

Necessary disbursements incurred in the care and removal of property shall be allowed, to be first allowed by the clerk subject to the approval of the judge. R.S.O. 1914, c. 63, s. 48.

43.—(1) The fees upon every proceeding shall be paid in the first instance, and before it is taken, by the party on whose behalf the proceeding is taken. By whom fees to be paid in first instance.

(2) If the fees are not so paid, payment may, by summary order of the judge, be enforced by execution in like manner as a judgment of the court. R.S.O. 1914, c. 63, s. 49. How enforced.

44. At the time of the issue of any process or execution the bailiff's fees thereon shall be paid to the clerk and shall be paid over to the bailiff, upon the return of the execution, and not before; but if the bailiff does not become entitled to any part, or becomes entitled to a part only of such fees, the whole or the surplus, as the case may be, shall be repaid by the clerk to the person from whom the fees were received. R.S.O. 1914, c. 63, s. 50. Bailiff's fees to be paid to clerk when execution issues.

45. If the bailiff neglects to return any process or execution within the time required by law he shall for such neglect forfeit his fees thereon, and all fees so forfeited shall be held to have been received by the clerk, who shall keep a special account thereof, and account for and pay over the same to the clerk of the peace, to be paid to the Treasurer of Ontario, to form part of the Consolidated Revenue Fund. R.S.O. 1914, c. 63, s. 51. Bailiff to forfeit fees if he neglects to return process.

Clerk or
bailiff not to
accept extra
fees.

46. A clerk or bailiff shall not directly or indirectly take or receive any commission, charge, fee or reward for or in connection with the collection of any debt or claim which has been or may or can be sued in the court for which he is clerk or bailiff, except such fees as are provided by a tariff of fees under this Act. R.S.O. 1914, c. 63, s. 52.

INSPECTION.

Appointment
of Inspector.
Duties.

47.—(1) The Lieutenant-Governor in Council may appoint an Inspector of Division Courts, whose duty shall be,—

Inspection of
offices.

(a) to make a personal inspection of every division court and of the books and papers thereof;

Books, etc.

(b) to see that the proper books are provided, that they are in good order and condition, that the proper entries and records are made therein in a correct manner, at suitable times, and in proper form and order, and that the papers and documents are properly classified and preserved;

Officers'
duties.

(c) to see that the duties of the officers of the courts are efficiently performed and that the office is at all times duly attended by the clerk;

Lawful fees.

(d) to see that lawful fees only are taxed or allowed as costs;

Security by
clerks and
bailiffs.

(e) to see that proper security is furnished and maintained on behalf of every clerk and bailiff;

Destruction of
useless papers.

(f) when authorized by the Lieutenant-Governor in Council so to do, to direct that any papers or documents which it is unnecessary to preserve be destroyed;

Report to
Lieutenant-
Governor.

(g) to report upon all such matters to the Lieutenant-Governor. R.S.O. 1914, c. 63, s. 53.

Delegation
of authority
by Inspector.

(2) The Inspector, with the approval of the Lieutenant-Governor in Council may delegate to any clerk or officer in his office any power or duty conferred or imposed upon the Inspector under this Act, and for such purpose every such person shall have and may exercise all the powers of the Inspector. 1917, c. 27, s. 20.

Power of in-
spector in
making in-
quiry into
conduct of
officers.

48. Where the Inspector considers it expedient to institute an inquiry into the conduct of a clerk or bailiff he may require him and any other person to give evidence on oath, and for that purpose shall have the same power as any court has in civil cases to summon such officer or other person to attend as a witness, to enforce his attendance and to

compel him to produce books and documents and to give evidence. R.S.O. 1914, c. 63, s. 54.

49. Every clerk and bailiff shall, as often as required by the Inspector, produce at the clerk's office, for examination and inspection, all books and documents required to be kept by him, and shall report to the Inspector concerning such matters as the Inspector shall require. R.S.O. 1914, c. 63, s. 55.

Books, etc., to be produced for inspection.

50. Every clerk and bailiff, within five days after his appointment, shall inform the Inspector of his appointment, of his full name and post office address. R.S.O. 1914, c. 63, s. 56; 1916, c. 26, s. 6.

Officers to inform Inspector of their appointment, etc.

51. Every clerk shall, on or before the 15th day of January in each year, make a return, in such form and manner as the Lieutenant-Governor in Council shall prescribe, of the business of his office for the year which ended on the 31st day of December next preceding. R.S.O. 1914, c. 63, s. 59.

Clerk to make returns to Lieutenant-Governor.

52. Every clerk and bailiff shall keep a separate book in which he shall enter from day to day all fees, charges and emoluments received by him by virtue of his office, and shall on the 15th day of January, in every year, make a return under oath to the Inspector, showing the aggregate amount of fees, charges and emoluments which he became entitled to receive during the year which ended on the 31st day of December next preceding. R.S.O. 1914, c. 63, s. 60.

Clerks' and bailiff's returns to Inspector.

JURISDICTION.

53. The court shall not have jurisdiction in

Cases in which court has no jurisdiction.

- (a) an action for the recovery of land, or an action in which the right or title to any corporeal or incorporeal hereditaments, or any toll, custom or franchise comes in question;
- (b) an action in which the validity of any devise, bequest, or limitation under any will or settlement is disputed;
- (c) an action for malicious prosecution, libel, slander, criminal conversation, seduction or breach of promise of marriage;
- (d) an action against a justice of the peace for anything done by him in the execution of his office, if he objects thereto;
- (e) an action upon a judgment, or order of the Supreme Court or a county court where execution may issue, upon or in respect thereof. R.S.O. 1914, c. 63, s. 61.

Cases in
which court
has juris-
diction.

54.—(1) Save as otherwise provided by this Act the court shall have jurisdiction in,—

- (a) a personal action where the amount claimed does not exceed \$120;
- (b) a personal action if all the parties thereto consent in writing, and the amount claimed does not exceed \$200;
- (c) an action on a claim or demand of debt, account, or breach of contract, or covenant, or money demand, whether payable in money or otherwise, where the amount or balance claimed does not exceed \$200; provided that in the case of an unsettled account the whole account does not exceed \$1,000;
- (d) an action for the recovery of a debt or money demand, where the amount claimed, exclusive of interest, whether the interest is payable by contract or as damages, does not exceed \$400 and the amount claimed is,—
 - (i) ascertained by the signature of the defendant or of the person whom as executor, or administrator he represents; or
 - (ii) the balance of an amount not exceeding \$400 which amount is so ascertained; or
 - (iii) the balance of an amount so ascertained which did not exceed \$800, and the plaintiff abandons the excess over \$400; but

an amount shall not be deemed to be so ascertained where it is necessary for the plaintiff to give other and extrinsic evidence beyond the production of a document and proof of the signature to it; and the jurisdiction conferred by this clause shall apply to claims and proceedings against an absconding debtor;

- (e) an action or contestation for the determination of the right of a creditor to rank upon an insolvent estate where the claim of the creditor does not exceed \$120;

Combining
causes of
action.

(2) Claims combining:—

- (a) causes of action in respect of which the jurisdiction is by subsection 1 limited to \$120 hereinafter referred to as class (a);
- (b) causes of action in respect of which the jurisdiction is by subsection 1 limited to \$200 hereinafter referred to as class (b);

- (c) causes of action in respect of which the jurisdiction is by subsection 1 limited to \$400 hereinafter referred to as class (c);

may be joined in one action; provided that the whole amount claimed in respect of class (a) does not exceed \$120; and that the whole amount claimed in respect of classes (a) and (b) combined, or in respect of class (b) where no claim is made in respect of class (a) does not exceed \$200, and that the whole amount claimed in respect of classes (a) and (c) or (b) and (c) combined, does not exceed \$400, and that in respect of classes (b) and (c) combined the whole amount claimed in respect of class (b) does not exceed \$200.

- (3) The findings of the court upon claims so joined shall be separate. Separate findings on combined claims.

(4) Where the value of property distrained, taken or detained does not exceed \$120, and the title to the land is not brought into question, an action of replevin may be brought in the court for the division within which the defendant or one of the defendants resides or carries on business, or where the property was distrained, taken or detained and *The Replevin Act* shall *mutatis mutandis* apply to such action. Replevin. Rev. Stat. c. 99.

(5) The court shall also have jurisdiction in actions between teachers and school boards as provided by *The High Schools Act*, *The Public Schools Act*, and *The Separate Schools Act*. 1920, c. 34, s. 1, part. Actions between teachers and school boards. Rev. Stat. cc. 326, 323, 328.

55. Except in actions in which a jury is demanded, as hereinafter provided, the judge shall hear and determine in a summary way all questions of law and fact and may make such order or judgment as appears to him just and agreeable to equity and good conscience, which shall be final and conclusive between the parties, except as herein otherwise provided. R.S.O. 1914, c. 63, s. 63. Judge to try.

56. Upon a contract for the payment of a sum certain in labour or in any kind of goods or commodities or in any other manner than in money, the judge may give judgment for the amount in money as if the contract had been so expressed, if the goods and commodities have not been delivered or the labour or other thing performed in accordance with the contract. R.S.O. 1914, c. 63, s. 64. Judge may order payment in money, although contract not for payment in money.

57.—(1) The court in actions otherwise within its jurisdiction shall have power to grant relief, redress, or remedy, or combination of remedies, either absolute or conditional, including the power to relieve against penalties and forfeitures, in as full and ample a manner as might be done in the like case by the Supreme Court. R.S.O. 1914, c. 63, s. 65 (1). Powers of courts.

Courts not to grant injunctions or receiver.

(2) Nothing in this section shall confer jurisdiction to grant an injunction. R.S.O. 1914, c. 63, s. 65 (2); 1921, c. 38, s. 2.

Minors may sue for wages.

58. A minor may sue for any sum not exceeding \$100 due to him for wages, or for work or services, as if he were of full age. R.S.O. 1914, c. 63, s. 66.

Causes of action not to be divided.

59.—(1) A cause of action shall not be divided into two or more actions for the purpose of bringing the same within the jurisdiction of the court.

Principal and interest may be sued for separately.

(2) Where a sum for principal, and also a sum for interest, is due and payable to the same person upon a mortgage, bill, note, bond or other instrument, he may notwithstanding anything in this section contained, but subject to the other provisions of this Act, sue separately for every sum so due. R.S.O. 1914, c. 63, s. 67.

Judgment to be full discharge.

60. A judgment in an action brought for the balance of an account, or for a part of a claim, where the residue is abandoned to bring the claim within the jurisdiction of the court, shall be a full discharge of all demands in respect of the account for the balance of which such action was brought or for the whole claim, as the case may be. R.S.O. 1914, c. 63, s. 68.

Transfer of actions to Supreme Court.

61.—(1) Where it appears at any stage of an action otherwise of the proper competence of the court that the court has not cognizance thereof on account of the title to land or any corporeal or incorporeal hereditament, or any toll, custom or franchise coming in question, or the validity of a devise, bequest or limitation under a will or settlement being disputed, the action shall not on that account be dismissed, but a judge of the Supreme Court, or the judge of the court in which the action is pending, may order the same to be transferred to the Supreme Court or to a county court where the county court would have jurisdiction, upon such terms as to the payment of costs or otherwise as he may think fit, and thereafter the action shall proceed in the Supreme Court or the county court as if originally commenced therein, and as if the defendant had entered an appearance; but the judge may give such directions as to procedure as may be deemed proper. R.S.O. 1914, c. 63, s. 69 (1) *part*.

Appeal from order.

(2) Where the order is made by a judge of the division court an appeal shall lie therefrom to a judge of the Supreme Court in chambers who may rescind the order or vary the terms thereof. R.S.O. 1914, c. 63, s. 69 (2).

62. If it appears to a judge of the Supreme Court that an action is a fit one to be tried in the Supreme Court, he may order that it be transferred to the Supreme Court upon such terms, as to payment of costs or otherwise, as he may think fit. R.S.O. 1914, c. 63, s. 70.

Action may be removed into High Court in certain cases.

63.—(1) When a counterclaim is disputed and involves matters beyond the jurisdiction of the division court the judge may try the claim and may if he sees fit stay the issue of execution upon the judgment until the counterclaim has been disposed of upon such terms as to security and otherwise as he sees fit to impose.

Counter-claim involving matters beyond jurisdiction.

(2) If the counterclaim or any part thereof is admitted the judge may direct the amount admitted to be set off *pro tanto* without prejudice to any proceedings to recover the balance. See R.S.O. 1914, c. 63, s. 71.

Set-off of counter-claim when admitted.

PROCESS AND PROCEDURE.

Division in which action to be entered.

64.—(1) An action may be entered and tried,—

In what court actions may be entered and tried.

(a) in the court for the division in which the cause of action arose or in which the defendant, or any one of several defendants, resides or carries on business at the time the action is brought; or

(b) in the court the place of sitting whereof is the nearest to the residence of the defendant.

Provided, that any action for wages of a woodman may be entered and tried in the court holden for the division in which the contract of hiring was made, notwithstanding any stipulation in the contract of employment or otherwise. In this section "woodman" shall mean a person performing labour or services in connection with any logs or timber, and shall include cooks, blacksmiths, artisans and all others usually employed in connection with such labour or services.

Place of trial in action for wages of woodman.

Interpretation of "woodman."

(2) In the cases provided for by clause b of subsection 1 and by subsection 2 of section 72, the summons may be served by a bailiff of the court out of which it issues, and upon judgment being recovered execution against the goods and chattels of the debtor, and all other process and proceedings to enforce payment of the judgment, may be issued to the bailiff of such court, and be executed and enforced by him in the county in which the debtor resides, as well as in the county in which the judgment was recovered. R.S.O. 1914, c. 63, s. 72.

Service of summons in such cases.

Execution.

When actions may be brought in other than the regular divisions.

65. If a person desires to bring an action in the court of a division other than as in the next preceding section mentioned, the judge may by order authorize an action to be entered and tried in the court of any division in his county adjacent to the division in which the defendant or one of the defendants resides, whether such defendant resides in the county of the judge granting the order or in an adjoining county. R.S.O. 1914, c. 63, s. 73.

Effect of agreement as to place of trial.

66. No proviso, condition, stipulation, agreement or statement which provides for the place of trial of an action, matter or proceeding shall be of any force or effect where the defendant, within the time limited for disputing the plaintiff's claim or within such further time as the judge shall allow, files with the clerk of the court in which the action was commenced a notice disputing the jurisdiction of the court and an affidavit of the defendant or his agent stating that in his belief there is a good defence to the action on the merits, and the division wherein the cause of action arose, or partly arose, and the division where the defendant resides. R.S.O. 1914, c. 63, s. 74.

Actions when defendant resides out of the Province.

67.—(1) Where a claim is within the proper competence of a division court, the action may be brought, notwithstanding that the residence of the defendant is, at the time of bringing the action, out of Ontario, and the action may be brought in the court of the division in which the cause of action arose or partly arose, but the court may refuse to allow the action to proceed if it appears that the action is one which ought to be tried elsewhere. R.S.O. 1914, c. 63, s. 75 (1) *part*.

Service of summons on non-residents.

(2) The service of the summons may be made by a bailiff of the court out of which it issued or by any person who may, either before or after the service, be approved by the judge or by the clerk, but such summons shall be served at least fifteen days before the return day thereof.

Proof of service.

Rev. Stat. c. 107.

(3) The affidavit of service, if not made in Ontario, may be sworn before any officer or person having authority to administer oaths under *The Evidence Act*.

Allowance for service out of Ontario.

(4) Where service of the summons has been effected out of Ontario, the judge may allow, as costs in the action, a sum towards the expenses incurred in effecting service, not exceeding in the whole \$5. R.S.O. 1914, c. 63, s. 75 (2-4).

Where defendant is a corporation not having head office in Ontario.

68. Where the defendant is a corporation not having its head office in Ontario, and the cause of action arose partly in one division and partly in another, the plaintiff may bring his action in either division. R.S.O. 1914, c. 63, s. 76.

69.—(1) Where the debt or money payable exceeds \$100, and is made payable by the contract of the parties at a place named therein, the action may be brought thereon in the court of the division in which the place of payment is situate, subject, however, to the action being transferred to the court of any division in which but for this section it might have been brought. Place of trial where amount sued for exceeds \$100.

(2) The judge of the court in which the action is brought may, upon application of the defendant made within the time limited for disputing the plaintiff's claim make an order transferring the action accordingly. Changing place of trial in such cases.

(3) The application shall be supported by an affidavit of the applicant or his agent stating that the applicant intends to defend the action, that there is a good defence upon the merits, that the cause of action did not wholly arise in the division in which the action is brought, that the witnesses for the defence, or some of them, reside within the division in which the defendants, or one of them, resided or carried on business at the time the action was brought, and that the application is not made for the purpose of delay; and the dates of the next two sittings of the court to which it is sought to have the action transferred shall also be shown. Affidavit in support of application.

(4) The order shall direct at what sittings of the court the action shall be tried, subject to all rights of postponement as in other cases, and shall be attached by the clerk to the summons and other proceedings in the action, and he shall forthwith transmit them to the clerk of the court to which the action is transferred, and enter a minute thereof in his procedure book. Order and papers to be transmitted to clerk.

(5) Upon receipt of the order and other papers by the clerk of such last mentioned court, he shall enter the action and proceedings in his procedure book. To be entered in procedure book.

(6) All the papers and proceedings in the action thereafter shall be intituled and carried on as though the action had originally been entered in the last mentioned court. Style.

(7) The defendant shall forthwith serve a copy of the order upon the plaintiff or his agent. R.S.O. 1914, c. 63, s. 77. Order to serve.

Notice Where Jurisdiction Disputed.

70. Where a defendant, or a garnishee intends to contest the territorial jurisdiction of the court, he shall leave with the clerk, within eight days after the day of service of the summons on him (where the service is required to be ten days before the return), or within twelve days after the day of such service (where the service is required to be Notice where jurisdiction of court disputed to be given.

fifteen or more days before the return), a notice in writing that he disputes the jurisdiction of the court, and the clerk shall forthwith give notice thereof to the plaintiff, or his agent in the same way as notice of defence is given, and in default of such notice, the jurisdiction shall be considered as established and determined, and all proceedings may thereafter be taken as fully and effectually as if the action had been properly entered or taken in such court. R.S.O. 1914, c. 63 s. 78.

When action
entered in
wrong Court.

71.—(1) If it appears that an action should have been entered in some other court of the same or some other county, it shall not fail for want of jurisdiction, but, on such terms as the judge shall order, all the papers and proceedings in the action may be transferred to any court having jurisdiction in the premises, and shall become proceedings thereof as if the action had been entered therein, and shall be continued as if it had originally been entered in the last mentioned court.

Clerk to place
on list and
notify parties.

(2) The clerk of the court, to which the proceedings have been transferred, shall place the action on the list for trial at the next sittings of his court which commences six clear days or more after he receives the papers, and he shall forthwith after receiving the papers notify the parties or their agents by registered post of the date, hour and place of the sittings, and the clerk issuing the summons shall certify in detail to the court to which the action is transferred all the costs incurred up to the date of the transfer. R.S.O. 1914, c. 63, s. 79.

Actions by
and against
clerks and
bailiffs.

72.—(1) A clerk or bailiff shall not sue or be sued in the court of which he is clerk or bailiff.

Idem.

(2) A clerk or bailiff shall sue or be sued separately or jointly with another person in the court of any next adjoining division whether in the same or another county.

Commenced
before
appointment.

(3) Nothing in this section shall prevent proceedings from being continued in the court in which the action was brought, where it was commenced before the appointment of such clerk or bailiff. R.S.O. 1914, c. 63, s. 80.

Action by or
against
judge.

73. An action by or against a judge may be brought in any court of a county adjoining that in which he resides. R.S.O. 1914, c. 63, s. 81.

Notices to be
in writing .

74. Unless otherwise provided, every notice required by this Act shall be in writing. R.S.O. 1914, c. 63, s. 82.

Entry of Claim, Service, etc.

75.—(1) The plaintiff shall enter his claim with the clerk Entry of claim with clerk. and at the same time shall deliver to him a copy (and if necessary, copies) of his account, claim or demand in writing in detail (and in case of tort, particulars of his demand) and each claim shall be numbered according to the order in which it is entered, and a summons in the prescribed form shall be issued, bearing the number of the claim on the margin thereof, and on the trial no evidence shall be given of any cause of action except such as is contained in the claim so entered.

(2) In an action on a promissory note, bill of exchange or cheque, the same shall be filed with the clerk before judgment, unless otherwise ordered, or unless it be shown that the note, bill or cheque is lost, or that it cannot for some other reason be produced. Promissory note, etc., to be filed before judgment. R.S.O. 1914, c. 63, s. 83.

76. The clerk shall annex the plaintiff's account or particulars to the summons, and shall deliver copies of the summons and account or particulars to the proper person to serve the same. What to accompany summons. R.S.O. 1914, c. 63, s. 84.

77. The summons, with a copy of the account or particulars attached, shall be served ten days at least before the return day thereof, and, where a defendant resides out of the county in which the action is brought, fifteen days at least before the return day thereof. When summons to be served. When defendant resides out of county. R.S.O. 1914, c. 63, s. 85.

78. There shall be endorsed upon the summons a notice informing the defendant that any application to change the place of trial must be made within the time limited for disputing the plaintiff's claim. Endorsement upon summons. R.S.O. 1914, c. 63, s. 86.

79. Where the amount of the claim exceeds \$30 the service shall be personal, and where the amount does not exceed \$30 the service may be on the defendant, his wife or servant, or on a grown up inmate of the defendant's dwelling-house or usual place of abode or business. When service to be personal or otherwise. R.S.O. 1914, c. 63, s. 87; 1921, c. 38, s. 3.

General Provisions.

80. The judge may make an order for substitutional service or for service by advertisement or otherwise. Substitutional service. R.S.O. 1914, c. 63, s. 88.

81.—(1) Every summons or process against a corporation, firm or individual whose chief place of business is not within Ontario, and all subsequent papers and proceedings in the action, may be served on the agent of the corporation, Service of process, etc., on corporations.

firm or individual whose office or place of business as such agent is either within the division from the court of which the summons or process issued, or is nearest thereto.

Interpretation "Agent." (2) For the purpose of this section the word "agent" shall include,

- (a) in the case of a railway company a station-master having charge of a station of the company;
- (b) in the case of a telegraph company, a person having charge of a telegraph office of the company; and
- (c) in the case of an express company, a person having charge of an express office of the company. R.S.O. 1914, c. 63, s. 89.

Postage. **82.** The postage on papers required to be served out of the division, and sent by mail for service, shall be costs in the cause. R.S.O. 1914, c. 63, s. 90.

Bailiff *pro tempore*. **83.**—(1) Where there is no bailiff or the bailiff is under suspension, the judge may appoint a bailiff *pro tempore* to perform,—

- (a) all the duties of bailiff; or
- (b) any particular duty.

Clerk may act as bailiff. (2) The clerk may also exercise the powers conferred by clause b

Duties of bailiff *pro tempore*. (3) The person appointed under clause a of subsection 1 shall perform all the duties required to be performed by a bailiff. R.S.O. 1914, c. 63, s. 91.

Clerk to prepare affidavits of service, etc. **84.** The clerk shall prepare an affidavit of service of every summons issued out of his court, or sent to him for service, stating how the same was served, the day of service and the distance the bailiff necessarily travelled to effect service, and the affidavit shall be annexed to or indorsed on the summons and shall be sworn to by the bailiff; but the judge may require the bailiff to be sworn in his presence, and to answer such questions as may be put to him touching any service or mileage. R.S.O. 1914, c. 63, s. 92.

Partners.

One or more of persons jointly liable may be sued. **85.**—(1) In case of a debt or demand against two or more persons, partners in trade or otherwise jointly liable, who reside in different divisions, or of whom one or more cannot be found, one or more of such persons may be sued or served with process, and judgment may be obtained and

execution issued against him or them, notwithstanding that others jointly liable have been sued or served without prejudice to the right of the person against whom execution issues to demand contribution from any other person jointly liable with him.

(2) Where a judgment has been obtained against one or more of several partners under the provisions of subsection 1, and the judge certifies that the demand proved was a partnership transaction, the bailiff, may, under the execution, seize and sell the property of the firm, as well as that of any defendant who has been served.

Bailiff may seize property of firm on certificate of judge.

(3) Two or more persons claiming or being liable as co-partners may sue or be sued in the name of the firm of which such persons were co-partners at the time of the accruing of the cause of action.

Service on parties added.

(4) Where partners are sued in the name of the firm, the summons may be served on one or more of them or at the principal place within Ontario of the business of the partnership or upon any person having control of the partnership business there and, subject to the provisions of subsections 6 and 7, such service shall be deemed good service upon the firm, and the affidavit of the service of the summons shall state the name of the person served.

Partners sued in name of firm.

(5) Any party may, at any time before or after judgment, apply for an order directing a statement of the names and addresses of the persons who are co-partners in any firm which is a party to the action by the firm name, to be furnished in such manner as the judge may direct.

Order to furnish names and addresses.

(6) In the case of a partnership which to the knowledge of the plaintiff has been dissolved before action the summons shall be served upon every person within Ontario sought to be made liable.

When partnership dissolved.

(7) Where a summons is issued against a firm and is served as directed by this section, every person upon whom it is served shall be informed by notice given at the time of service whether he is served as a partner or as a person having control or management of the partnership business or in both characters, and in default of such notice the person served shall be deemed to be served as a partner.

Notice of capacity in which person served.

(8) Debts owing from a firm carrying on business within Ontario may be attached under section 138, although one or more members of the firm may be resident out of Ontario, provided that some person having the control or management of the partnership business or a member of the firm within Ontario is served with the attaching order. R.S.O. 1914, c. 63, s. 93.

Attachment of debts due by firm.

Execution
against
partners.

86.—(1) Where a judgment is against a firm, subject to the provisions of section 87, execution may issue against the property of,—

- (a) the partnership;
- (b) any person who has admitted in the notice of dispute or defence filed that he is a partner, or who has been adjudged a partner;
- (c) any person who has been individually served as a partner with a copy of the summons and who has not filed a notice of dispute or defence.

Leave to issue
execution
against other
members.

(2) If the party who has obtained a judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may apply for leave to do so, and the judge may give such leave if the liability be not disputed, or, if disputed, after the liability has been determined in such manner as he may direct. R.S.O. 1914, c. 63, s. 94.

Effect of judgment against firm.

87. Except as against the property of the partnership, a judgment against a firm shall not render liable, release, or otherwise affect any member thereof who was out of Ontario when the summons was issued, and who has not entered a defence to the action, unless he has been made a party under section 89 or has been served within Ontario after the summons was issued. R.S.O. 1914, c. 63, s. 95.

Persons carrying on business in Ontario under another name.

88.—(1) A person, whether or not a British subject, and whether residing in or out of Ontario, carrying on business within Ontario under a name or style other than his own name, may be sued in such name or style.

Leave to issue not required.

(2) Leave shall not be necessary to issue the summons.

Service of summons.

(3) The summons may be served upon the person so carrying on business if he be within Ontario, or at his place of business within Ontario, or, if there are several such places at the place in or nearest to the county in which the cause of action arose, upon any person having the control or management of the business there, and such service shall be equivalent to personal service on the person so sued.

Notice of character in which person served.

(4) The person upon whom the summons is served shall be informed by notice given at the time of service whether he is served as the person carrying on the business or as the person having the control or management of it or in both characters, and in default of such notice he shall be deemed to be served as the person carrying on the business.

Procuring name and address of person carrying on business.

(5) Any party may, at any time before or after judgment, apply for an order directing a statement of the name and address of the person who is, and of the person, who, at the

time of the accruing of the cause of action, was carrying on business under such name or style to be furnished in such manner as the judge may direct.

(6) The person so sued shall enter a dispute in his own name, but all subsequent proceedings shall continue in such name or style. Person served to appear in his own name.

(7) A person served as the person carrying on the business may enter a defence under protest, denying that he is the person so carrying on the business, but such defence shall not preclude the plaintiff from otherwise serving the person sued or from obtaining judgment in default of defence in the ordinary form by the person so sued. Defence under protest.

(8) Where a summons is served under subsection 3 on a person having the control or management of but not carrying on the business, a dispute by him shall not be necessary. When person served is not carrying on the business.

(9) A judgment or order in the action may be enforced by execution against, Enforcement of judgment, what property exigible.

(a) the property of the person so sued, used or employed in or in connection with the business; and

(b) the property within Ontario of the person so sued if he has entered a defence in the action, or has been adjudged to be the person carrying on the business or has been personally served with the summons within Ontario and has failed to enter a defence.

(10) If the person so sued has not entered a dispute or has not been personally served, or has not been adjudged to be the person carrying on the business, the plaintiff may apply for leave to issue execution against the person within Ontario whom the plaintiff alleges to be the person carrying on the business, and the judge may give such leave if the liability be not disputed, or, if disputed, after the liability has been determined in such manner as the judge may direct. Issuing execution against person alleged to be carrying on the business.
R.S.O. 1914, c. 63, s. 96.

Adding Parties.

. 89.—(1) The judge may at any stage of the proceedings, upon such terms as may appear to him to be just, order that ~~the name of the plaintiff, defendant, or garnishee~~ improperly joined be struck out, and that any person who ought to have been joined or whose presence is necessary in order to enable the judge effectually and completely to adjudicate upon the questions involved in the action be added as plaintiff, defendant, or garnishee. Striking out and adding parties.

(2) Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, Substituting or adding plaintiff.

the judge, if satisfied that it has been so commenced through a *bona fide* mistake and that it is necessary for the determination of the real matter in dispute so to do, may order any other person to be substituted or added as plaintiff upon such terms as he may deem just.

Consent of party added required.

(3) No person shall be added or substituted as a plaintiff or as a next friend, unless his own consent in writing thereto be filed.

Service on parties added.

(4) A person who is added as a defendant or garnishee, shall be served with a copy of the summons, the original summons being first amended, and the proceedings against him shall be deemed to have been commenced from the date of the order making him a party; but if the application to add any person as a party defendant or garnishee be made at the trial, the judge may make the order in a summary manner upon such terms as to him may seem just, and may dispense with the service of a copy of the summons if such person or his agent consents thereto. R.S.O. 1914, c. 63, s. 97.

Judgment by Default where Summons Specially Endorsed.

In proceedings by special summons final judgment entered by the clerk when claim in whole or in part not disputed, etc.

90.—(1) In actions for the recovery of a debt or money demand, where the particulars of claim, with reasonable certainty and detail, are endorsed on or attached to the summons, hereinafter called a special summons, and a copy of the summons and particulars, with a notice in the prescribed form, annexed to or endorsed on such copy has been duly served, then, unless the defendant has left with the clerk, within eight days after the day of service (where the service is required to be ten days before the return), or within twelve days after the day of service (where the service is required to be fifteen days before the return), a notice to the effect that he disputes the claim, or some part, and how much thereof, final judgment may be entered by the clerk on the return of the summons, or at any time within one month therefrom, or, by order of the judge, at any time thereafter for the amount claimed in the particulars, or so much thereof as has not been disputed, and execution may issue thereon without prejudice to the right of the plaintiff to proceed for the remainder of his claim.

Summons, particulars and affidavit to be filed.

(2) The judgment shall be in the prescribed form, but shall not be entered until the special summons and particulars with an affidavit of the due service of both have been filed.

Judge may set aside judgment.

(3) The judge may set aside such judgment and permit the case to be tried, on such terms as to him may seem just. R.S.O. 1914, c. 63, s. 98.

Judgment by default under s. 92, where final judgment not entered.

91. Where proof is made by affidavit or otherwise of the service of a special summons, and of the particulars of the plaintiff's claim as required by section 92, and judgment

has not been entered under the provisions of the said section, the judge may, if the defendant does not in person or by agent appear in open court, as required by the summons, give judgment against him by default, without requiring proof of the plaintiff's claim. R.S.O. 1914, c. 63, s. 99.

92.—(1) In any action commenced by special summons ^{Motion for judgment.} for the recovery of a debt or money demand of \$25 or upwards, the plaintiff, on an affidavit made by himself or any other person swearing positively to the facts and verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the action, and the reasons why immediate judgment should be granted, may concurrently with the service of the special summons, or at any subsequent time, serve the defendant with a notice of motion, returnable not less than four clear days after service, to show cause before the judge why the plaintiff should not be at liberty to have final judgment entered by the clerk for the amount of the debt or money demand sought to be recovered, together with interest, if any, and costs. A copy of the affidavit shall be served with the notice of motion. The judge thereupon, if the reasons for immediate judgment appear to be sufficient, unless the defendant or his agent by affidavit or otherwise satisfies him that the defendant has a good defence to the action on the merits, or discloses such facts as may be deemed sufficient to entitle him to defend the action, may make an order empowering the clerk to sign final judgment.

(2) The defendant may show cause by offering to bring ^{How defendant may show cause.} into court the amount sought to be recovered, or by affidavit which shall state whether the defence he alleges goes to the whole or to part only, and if to part only, then to what part of the claim. The judge may, if he thinks fit, order the defendant to attend and be examined upon oath, and to produce any books and documents, or copies thereof, or extracts therefrom.

(3) If it appears that the defence applies only to a part ^{Partial defence.} of the claim, or that part of the claim is admitted to be due, the plaintiff shall be entitled to have final judgment entered forthwith for such part of his claim as the defence does not apply to or as is admitted to be due, subject to such terms, if any, as to suspending execution, payment of any amount levied, or any part thereof, into court by the bailiff, the taxation of costs or otherwise, as to the judge may seem just; and the defendant may be allowed to defend as to the residue of the claim. ^{Judgment for part.}

(4) If it appears to the judge that a defendant has a good defence, or ought to be permitted to defend, and that ^{Where one defendant has good defence.} any other defendant has not such defence, and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to have judgment

entered against the latter, and may issue execution upon the judgment without prejudice to his right to proceed with his action against the former.

Terms upon giving leave to defend.

(5) Leave to defend may be given unconditionally, or subject to such terms as to giving security or otherwise, as to the judge may seem just.

Setting aside or varying order.

(6) Within seven days after making the order, and upon good grounds being shown, the judge may set aside or vary the order upon such terms as to him may seem just. R.S.O. 1914, c. 63, s. 100.

Leave to dispute claim at any time before judgment.

93. At any time before judgment is entered although the time for giving the notice disputing the plaintiff's claim has expired, the judge, on sufficient grounds shown, and on such terms as to him may seem just, may give leave to the defendant to dispute the plaintiff's claim, in which case the notice disputing the claim shall immediately be left with the clerk, and also delivered to the plaintiff or sent to him by registered post. R.S.O. 1914, c. 63, s. 101.

Withdrawal of defence.

94. A defendant who has filed a notice disputing the claim may, by notice to the clerk at least six days before the sittings at which the action may be tried, consent that judgment be entered against him for any amount, and the clerk shall immediately notify the plaintiff thereof by registered post, and thereupon the plaintiff shall be entitled to have judgment entered by the clerk as by default for such amount and the costs necessarily incurred. R.S.O. 1914, c. 63, s. 102.

Requisites of notices.

95. Where a defendant or garnishee has given the clerk notice that he disputes the claim, or any other notice of which the plaintiff should be informed before the trial, or where it becomes the duty of the clerk to give notice to any party to an action of any defence, admission, judge's order or other matter of which he should be notified before the trial, the notice shall state the place and time of the sittings of the court at which the action is to be tried. R.S.O. 1914, c. 63, s. 103.

Power to amend proceedings.

96. The judge may, at any time and on such terms as to costs and otherwise as to him may seem just, amend any defect or error in any proceeding; and all such amendments may be made as may be necessary for the advancement of justice, determining the real question raised by or depending on the proceedings and best calculated to secure the giving of judgment according to the very right and justice of the case. R.S.O. 1914, c. 63, s. 104.

Trial

97. Where a trial is to be had the defendant shall on the day named in the summons, either personally or by agent, appear in the court to answer, and, on answer being made, the judge shall, without further pleading or formal joinder of issue, proceed in a summary way, to try the action and give judgment; and if satisfactory proof is not given entitling either party to judgment, he may nonsuit the plaintiff. R.S.O. 1914, c. 63, s. 105.

Judge may summarily dispose of action or nonsuit plaintiff.

98.—(1) The clerk shall place all actions in which the sum sought to be recovered exceeds \$100 at the foot of the trial list and the judge shall in such cases, unless an agreement not to appeal has been signed and filed as provided by section 99, take down the evidence in writing or cause the same to be taken down in shorthand by a shorthand writer appointed under section 18 of *The County Judges Act*, or by some other competent person.

Order in which actions over \$100 to be tried.

Evidence.

Rev. Stat. c. 90.

(2) Where the evidence is taken down by the judge in writing it shall be left with the clerk and in the event of an application for a new trial it shall be forwarded to the judge by the clerk for the purposes of the application.

Evidence taken down by judge.

(3) Where the evidence is taken down in shorthand it shall not be necessary for the shorthand writer to extend or transcribe his notes except in the case of an appeal or an application for a new trial.

Shorthand writers' notes.

(4) The fees and expenses of a shorthand writer appointed under section 18 of *The County Judges Act* attending for the purpose of taking down the evidence as provided in subsection 1, shall be borne and paid in the same manner as the fees and expenses of a shorthand writer attending a sittings of a county or district court. 1920, c. 34, s. 3.

Fees and expenses. Rev. Stat. c. 90.

99. An appeal shall not lie if, before the commencement of the trial, there is filed with the clerk an agreement in writing not to appeal, signed by the parties, or their agents, and the judge shall note in his minutes whether such agreement was so filed or not, and the minutes shall be conclusive evidence upon that point. R.S.O. 1914, c. 63, s. 107.

Parties may agree not to appeal.

100. If on the day named in the summons the defendant does not appear, or sufficiently excuse his absence, or if he neglects to answer, the judge, on proof of due service of the summons and particulars, may proceed with the trial in his absence, and, except where the plaintiff's claim is for unliquidated damages in case of the personal service of the summons and of detailed particulars of the plaintiff's claim, the judge may, in his discretion, give judgment without further proof. R.S.O. 1914, c. 63, s. 108.

Proceedings in case defendant does not appear.

Judge may
adjourn hear-
ing of cause.

101. The judge may adjourn the trial of an action, whether it is being tried with or without a jury, to permit either party to summon witnesses or to produce further proof, or to serve or give any notice necessary to enable him to enter more fully into his case or for any cause which the judge thinks reasonable, upon such conditions as to payment of costs and admission of evidence, or otherwise, as to him may seem just. R.S.O. 1914, c. 63, s. 109.

Who may
act as agents
at trial.

102. A barrister or solicitor or any other person not prohibited by the judge, may appear at the trial or hearing of an action as agent for any party thereto. R.S.O. 1914, c. 63, s. 110.

Tender and Payment of Money into Court.

Plea of tender
with payment
of money
into court.

103.—(1) If the defendant desires to plead a tender before action of a sum of money in full satisfaction of the plaintiff's claim he may do so on filing his defence with the clerk at least six days before the day appointed for the trial, and at the same time paying into court the amount mentioned in the defence; and notice of the defence and payment shall be forthwith sent by the clerk to the plaintiff by registered post, or delivered at his usual place of abode or business.

Amount
tendered to be
accepted un-
less plaintiff
gives notice.

(2) The plaintiff shall be deemed to have accepted the money in full satisfaction of his claim and all proceedings in the action shall be stayed unless, within three days after the receipt of notice of the payment, he signifies in writing to the clerk his intention to proceed for his claim notwithstanding such defence, in which case the action shall proceed.

When plaintiff
does not give
notice.

(3) If the plaintiff does not give the notice mentioned in subsection 2 the money shall be paid to him less \$1 to be paid over to the defendant for his trouble.

Giving of
notice after
time limited.

(4) The judge may allow the plaintiff to give the notice to the clerk after the expiration of the said three days on such terms as to him may seem just.

Rule as to
costs where
plaintiff pro-
ceeds for
balance.

(5) If after tender and payment into court the plaintiff proceeds with the action and does not recover more than the sum paid into court, he shall pay the defendant his costs, charges and expenses, and the amount thereof may be paid to the defendant out of the money so paid in, or may be recovered from the plaintiff in the same manner as money payable under a judgment; but, if the plaintiff recovers more than the sum paid into court, the full amount paid into court shall be applied towards the satisfaction of his claim, and judgment may be given against the defendant for the residue and costs of the action. R.S.O. 1914, c. 63, s. 111.

104.—(1) The defendant may, not less than six days before the day appointed for the trial, pay into court a sum in full satisfaction of the plaintiff's claim, together with the plaintiff's costs up to the time of such payment. Defendant may pay money into court.

(2) The clerk shall forthwith deliver or send notice of such payment by registered post to the plaintiff, and the sum so paid shall be paid to the plaintiff, and he shall be deemed to have accepted it in full satisfaction of his claim, and all proceedings in the action shall be stayed, unless within three days after the receipt of the notice the plaintiff gives notice to the clerk of his intention to proceed for the remainder of his claim, in which case the action shall proceed. Clerk to give notice of payment to plaintiff.

(3) The judge may allow the plaintiff to give the notice to the clerk after the expiration of the said three days on such terms as to him may seem just. Notice to be given after three days.

(4) If the plaintiff recovers no more than the sum paid into court, he shall pay the defendant all costs, charges and expenses incurred by him in the action after such payment, to be taxed and recovered by the same means as any other sum ordered by the court to be paid. R.S.O. 1914, c. 63, s. 112. Plaintiff to pay defendant's costs if no further sum recovered.

Set-Off and Statutory Defences.

105.—(1) Where the defendant desires to avail himself of the laws of set-off, or of *The Limitations Act* or of a defence under any other statute, he shall, not less than six days before the trial, give notice thereof to the plaintiff, or leave the same for him at his usual place of abode or business if within the division, or if the plaintiff lives without the division, shall deliver the same to the clerk; and in case of a set-off the particulars thereof shall be delivered to the clerk and shall accompany the notice to be given to the plaintiff. Defendant to give notice of set-off or other statutory defence. Rev. Stat. c. 106.

(2) Except by leave of the judge no evidence of set-off shall be given by the defendant save such as is contained in the particulars delivered. Evidence of set-off.

(3) If the set-off proved exceeds the amount found to be due to the plaintiff, judgment shall be entered for the defendant for the excess, if the excess be an amount within the jurisdiction of the court; but if the excess be an amount beyond the jurisdiction of the court, the judge may order that an amount of the set-off equal to the amount found to be due to the plaintiff be satisfied by the claim, but the adjudication shall not be a bar to the recovery by the defendant in a subsequent action for the residue of the set-off. R.S.O. 1914, c. 63, s. 113. Provisions if set off exceeds amount due to plaintiff.

WITNESSES AND EVIDENCE.

Subpœnas.

Parties may obtain subpœnas from clerk.

106. A party may obtain from the clerk of any division court in the county a subpœna with or without the clause for the production of books, papers, and documents, requiring any witness, resident within Ontario or served with the subpœna therein, to attend at a specified court or place before the judge, or an arbitrator appointed by him under the provisions hereinafter contained, and the clerk, when requested by a party or his agent, shall furnish copies of such subpœna. R.S.O. 1914, c. 63, s. 114.

Service of subpœna, by whom made.

107. Any number of names may be inserted in a subpœna, and service thereof may be made by any literate person, personally or by leaving a copy thereof at the usual place of abode of the witness, and proof of such service and of tender or payment of witness fees and mileage, may be received by the judge, either orally or by affidavit. R.S.O. 1914, c. 63, s. 115.

Penalty for disobeying subpœna or refusing to be sworn.

108.—(1) Every person served with a copy of a subpœna to or for whom at the time of such service a tender or payment of his witness fees and mileage has been made, who refuses or neglects without sufficient cause to obey the subpœna, and every person in court called upon to give evidence who refuses to be sworn or to give evidence, shall be liable to pay such fine not exceeding \$8 as the judge may order, and shall be also liable to imprisonment for any time not exceeding ten days on the order of the judge.

Enforcing payment of fine.

(2) The fine shall be levied and collected with costs, by the same process as a judgment recovered in the court and the whole or any part of the fine, after deducting the costs, shall be applicable, in the discretion of the judge, towards indemnifying the party injured by such refusal or neglect, and the remainder shall form part of the Consolidated Revenue Fund. R.S.O. 1914, c. 63, s. 116.

Fees to witness out of county.

109. A person served with a subpœna, who is resident in Ontario, but not in the county in which the court is situate, shall be entitled to be paid witness fees and mileage according to the county court tariff. R.S.O. 1914, c. 63, s. 117.

Commissions to take Evidence.

Power to issue commissions to take evidence.

110.—(1) If a party is desirous of having at the trial or hearing the testimony of a person residing out of Ontario, the judge, upon hearing the parties, may order the issue of a commission out of and under the seal of the court to a commissioner to take the examination of such person.

(2) An order shall not be made for the issue of a commission for taking the testimony of the party applying therefor, or of any person in his employment, unless in the opinion of the judge a saving of expenses will be caused thereby, or unless it is clearly made to appear that the party or person is aged, infirm, or unable from sickness to appear as a witness.

When commission to take evidence of applicant, etc., may be granted.

(3) If it is made to appear to the judge that a material and necessary witness residing in Ontario is sick, aged, or infirm, or that he is about to leave Ontario, and that his attendance as a witness cannot be procured, the judge may make an order appointing a suitable person to take his testimony.

Examination of witnesses whose attendance at trial cannot be obtained.

(4) An order may also be obtained for the examination of a witness who resides in a remote part of Ontario, and at a great distance from the place of trial, if it be made to appear that his attendance cannot be procured, or that the expense of his attendance would be out of proportion to the amount involved in the action, or so great that the party desiring his attendance should not under the circumstances be required to incur the same.

Examination of witness residing at a distance from place of trial.

(5) A copy of the order, with two days' notice of the time and place of the examination, shall be served upon the opposite party, or his agent, who may appear, and cross-examine the witness.

Service of order.

(6) The provisions of the Rules of the Supreme Court, so far as the same are applicable, shall apply to every commission or order issued under the authority of this section.

Rules made applicable to commissions.

(7) The costs of the issue, transmission, execution and return of any commission issued or order made under the provisions of this section shall be in the discretion of the judge, who may allow a sum in gross therefor; and the costs may be added to any other costs to be paid to the party entitled thereto, and may be recovered in like manner as the ordinary costs of an action. R.S.O. 1914, c. 63, s. 118.

Costs of commission

Books of Account, Affidavits, etc., as Evidence.

111. In an action for a debt or money demand of not more than \$25, and in case of a defence of set-off or of payment so far as the same extends to \$25, the judge, on being satisfied of their general correctness, may receive the plaintiff's, defendant's or garnishee's books as evidence, and may also receive as evidence the affidavit of any party or witness resident out of the county, but may require the party or witness to answer written interrogatories upon oath. R.S.O. 1914, c. 63, s. 119.

Judge may receive in evidence plaintiff's or defendant's books of account.

When evidence may be given by affidavit.

112.—(1) In any action the judge may in his discretion permit the evidence of any person out of the jurisdiction, or in some remote part of the province, to be given by affidavit upon such terms as to cross-examination, the answering of written interrogatories upon oath and the production of books and papers for inspection and otherwise as may be deemed necessary.

Costs occasioned by objection to affidavit evidence.

(2) Where in the opinion of the judge expense is unnecessarily incurred by reason of any objection of either party to the reception of affidavit evidence or by cross-examination he may order that party to pay the costs of both parties occasioned by such objection. *See* Con. Rule 269.

Before whom affidavits may be sworn.

113.—(1) Affidavits may be sworn before a clerk or deputy clerk, or before a justice of the peace, notary public or commissioner for taking affidavits.

Affidavits sworn before agents not to be used.

(2) An affidavit, sworn before the agent of the party on whose behalf it was made, or before the clerk or partner of such agent, shall not be used. R.S.O. 1914, c. 63, s. 120.

JUDGE'S DECISION.

Judge may give judgment instant, or postpone judgment.

114. The judge shall, in court, openly, and as soon as may be after the trial, pronounce his decision; but if he is not then prepared to pronounce a decision he may postpone it until it is convenient for him to give the same, and he shall then send it to the clerk, who shall forthwith enter the judgment and by registered post notify the parties or their agents thereof. R.S.O. 1914, c. 63, s. 121.

Judge may direct times and proportions in which judgment shall be paid.

115.—(1) The judge may order the times and the proportions in which any sum and costs recovered by judgment shall be paid, having regard to the provisions of section 117.

Execution not to issue for fifteen days after judgment.

(2) Unless otherwise ordered, execution shall not issue within fifteen days after the entry of judgment, but the judge may order the amount of the judgment or any instalment thereof to be paid into court. R.S.O. 1914, c. 63, s. 122.

New trial.

116.—(1) Upon application made within fourteen days after the trial, or where the decision is not given at the trial after the mailing of the notice of the decision to the party applying, and upon good grounds being shown, the judge may grant a new trial upon such terms as he thinks reasonable, and in the meantime may stay proceedings.

Extending time for application.

(2) If reasonable excuse for the delay is shown to the satisfaction of the judge, the application may be made at any time within fourteen days after the expiration of the first mentioned fourteen days.

(3) Where the summons has not been personally served the application may be made at any time within fourteen days after the judgment has come to the knowledge of the defendant.

(4) Instead of granting a new trial, the judge may pronounce the judgment which in his opinion ought to have been pronounced at the trial, and may order judgment to be entered accordingly. R.S.O. 1914, c. 63, s. 123.

Judgment on application for new trial.

117. Except where a new trial is granted, the issue of execution shall not be postponed for more than fifty days from the service of the summons, without the consent of the party entitled to the same; but if it is proved to the satisfaction of the judge that a party is unable, from sickness or other cause, to pay the debt or damages recovered against him, or any instalment thereof ordered to be paid, or that for any other reason the issue of execution should be further postponed, the judge may stay the judgment, order or execution for such time and on such terms as he thinks fit, and so from time to time until it is proved that the cause of disability has ceased. R.S.O. 1914, c. 63, s. 124.

Execution not to be postponed for more than fifty days.

APPEALS.

118. Subject to the provisions of section 99 an appeal shall lie to the Appellate Division from the decision of the judge at or after the trial or upon an application for a new trial, except in cases where a new trial has been granted,—

Appeals to Appellate Division.

- (a) in an action or garnishee proceeding where the sum in dispute exceeds \$100, exclusive of costs;
- (b) in interpleader where the money or the value of the goods or chattels claimed or proceeds thereof exceeds \$100, or where the damages claimed by or awarded to either party against the other or against a bailiff exceeds the sum of \$60;
- (c) where the parties consent to an appeal; or
- (d) where the effect of the decision is to determine that any general assessment made by a mutual insurance company is invalid; but the company, unless the Divisional Court otherwise directs, shall pay the respondent's costs of the appeal between solicitor and client on the County Court scale in any event. R.S.O. 1914, c. 63, s. 125.

119. Where a claim and counterclaim arise out of the same transaction or occurrence and an appeal is brought from the judgment upon either, the judgment upon both shall be subject to review by the court. *See* Con. Rule 116.

Agents for
service where
right to
appeal.

120.—(1) Where an appeal lies, each party shall, before or at the trial, leave with the clerk a memorandum in writing of the name and place of abode of some person resident within the county town upon whom the notice of appeal, and all other papers thereafter requiring service, may be served for him, and service upon such person, or, in his absence, at his place of abode, shall be sufficient; and, in the event of failure to leave such memorandum, all papers requiring service upon the party so failing may be served upon the clerk, or left at his office, and the clerk shall forthwith send, by registered post, all papers so served upon him, to the person entitled thereto.

Case of
judicial
district.

(2) This section shall not apply to a provisional judicial district. R.S.O. 1914, c. 63, s. 126.

Certified pro-
ceedings, etc.,
to be furnished
by clerk.

121. The clerk shall, at the request of the appellant or his agent, certify under his hand to the clerk of the central office at Osgoode Hall, Toronto, the summons with all notices indorsed thereon, the claim, and any notice of defence, the evidence and all objections and exceptions thereto, and all motions or orders made, granted, or refused therein, together with such notes of the judge's charge as may have been made, the decision when in writing, or the notes thereof, and all affidavits and other papers in the action, and shall furnish to the parties, when required so to do, copies of the proceedings so certified, or such part thereof as may be required, and for every copy he shall be entitled to receive five cents for every one hundred words. R.S.O. 1914, c. 63, s. 127, *part*.

Appeal
when and
how made.

122.—(1) The appeal shall be made in the time and manner prescribed by the Rules of court.

Stay of
proceedings.

(2) After the appeal has been set down to be heard, the execution of the judgment appealed from shall be stayed pending the appeal, unless otherwise ordered by a judge of the Supreme Court. R.S.O. 1914, c. 63, s. 128 (3).

Taxable costs
on appeal.

123. The costs taxable, between party and party of and incidental to an appeal shall be the actual disbursements, and no greater amount over and above actual disbursements than \$15, inclusive of counsel fee; the costs of an appeal between solicitor and client, shall be taxable on the county court scale. R.S.O. 1914, c. 63, s. 129.

JURIES.

When a
jury may
be required.

124. Either party may require a jury in any class of action where the amount sought to be recovered exceeds \$50. 1921, c. 38, s. 4.

Parties to give
notice to clerk
if they require
a jury.

125.—(1) Where the plaintiff requires a jury, he shall give notice thereof to the clerk one week before the sittings

of the court at which the action is to be tried, and deposit with him the proper fees for the expenses attending the summoning of the jury; and where a claimant or a defendant requires a jury, he shall, within five days after the day of service of the summons on him, give to the clerk the like notice, and deposit with him the proper fees; and thereupon, in either case, a jury shall be summoned.

(2) In an action transferred from one court to another, either party may require a jury to be summoned by giving to the clerk of the court to which the action has been transferred, three clear days before the sittings of the court at which the case is to be tried, a notice requiring a jury to be summoned, and depositing with him the proper fees for the expenses attending the summoning of the jury. R.S.O. 1914, c. 63, s. 131. When action has been transferred.

126. Unless exempted by *The Jurors' Act*, every person whose name appears on the last revised voters' list of a municipality partly or wholly within the division who resides therein, and whose name is marked 'J,' shall be liable to serve as a juror for the court of such division. R.S.O. 1914, c. 63, s. 132. Who liable to be jurors. Rev. Stat. c. 96.

127.—(1) The jurors shall be residents of the division and shall be selected from the last revised voters' lists of the municipalities partly or wholly within the division. From whom selected.

(2) Where there has been no previous selection of jurors the manner of selecting them shall be as follows:— Manner of selection.

(a) The clerk shall begin with the name of the first qualified person on the list of the municipality and proceed with the selection by taking the names in rotation until the requisite number has been selected.

(b) Where there are several municipalities the clerk shall begin with the name of the first qualified person on the list of the municipality in which the court is held, taking one name from the list, and then shall take one name from each of the lists of the other municipalities in rotation, beginning with that list which contains the greatest number of names of qualified persons, and shall repeat the same process until the requisite number has been selected.

(3) Where there has been a previous selection of jurors the clerk shall proceed as provided by the last preceding subsection, except that he shall begin where he left off at the next preceding selection, or in the case of a new list as nearly as may be at the place which corresponds with the place where he left off at the previous selection. Where there has been previous selection of jurors.

Where cost of summoning jury is excessive.

(4) If it appears to the judge that the cost of summoning a jury is excessive, by reason of the residences of the persons liable to be selected being in a distant portion of the division, he may direct the clerk to begin with the name of the first qualified person on the list of any municipality partly or wholly within the division, and proceed as in subsection 2.

When municipality is a party.

(5) Where a municipality, partly or wholly within the division, is a party, and the jury would, if selected in ordinary course, be composed of ratepayers of such municipality, the judge, upon the application of any party, may direct the clerk not to select any juror from the list of such municipality, or may before or at the trial direct that the issues shall be tried and damages be assessed without a jury. R.S.O. 1914, c. 63, s. 133.

Case of judicial district.

128. Sections 126 and 127 shall not apply to a provisional judicial district. R.S.O. 1914, c. 63, s. 135.

Summoning jurors.

129. Where a jury is required to be summoned, the clerk shall cause not less than twelve of the persons liable to serve as jurors to be summoned, and the summons shall be served at least two days before the court, either personally, or by leaving the same with a grown up person at the residence of the juror, and the summons shall be returned to the clerk with an affidavit of service of the bailiff serving the same. R.S.O. 1914, c. 63, s. 136.

Parties entitled to challenge.

130. Each party shall be entitled to challenge two jurors peremptorily and any juror for cause. R.S.O. 1914, c. 63, s. 137.

Penalty on jurors disobeying summons.

131. A juror who, after being duly summoned, wilfully neglects or refuses to attend, shall be liable to a fine, in the discretion of the judge, not exceeding \$4, which shall be levied and collected, with costs, by the same process as a judgment recovered in the court. R.S.O. 1914, c. 63, s. 138.

Judge's list and jury list.

132.—(1) Actions to be heard by the judge alone shall be set down in a list separate from the list of those to be tried by a jury, to be severally called "The Judge's List," and "The Jury List," and actions shall be set down in the order in which they were entered with the clerk.

Jury list to be first.

(2) "The Jury List" shall be first disposed of, unless the judge otherwise directs. R.S.O. 1914, c. 63, s. 140.

Five jurors to be empanelled, etc.

133. Five jurors shall be empanelled and sworn to do justice between the parties whose cause they are required to try, according to the best of their skill and ability, and to give a true verdict according to the evidence, and the

verdict of every jury shall be unanimous. R.S.O. 1914, c. 63, s. 141. Verdict to be unanimous.

134.—(1) If the panel is exhausted, the judge may direct the clerk to summon, from the body of the court, a sufficient number of disinterested persons to make up a full jury, and any person so summoned may, saving all lawful exceptions and rights of challenge, act as a juror. Judge may call tales.

(2) Where the judge thinks it proper to have the action or any controverted fact tried by a jury, the clerk shall instantly return a jury of five disinterested persons present, to try the same, and the judge may give judgment on the verdict of the jury. Judge may order jury to be empanelled to try any disputed fact.

(3) Each juror so called and sworn shall be paid the sum of ten cents, and the moneys so paid shall be taxed as costs in the cause. R.S.O. 1914, c. 63, s. 142. Fee of juror.

135. If the judge is satisfied that a jury, after having been out a reasonable time, cannot agree upon their verdict, he may discharge them and adjourn the trial, and order the clerk to summon a new jury for the next sittings, unless the parties consent that the judge may give judgment on the evidence already taken, in which case he may give judgment accordingly. R.S.O. 1914, c. 63, s. 143. Judge may discharge jury not agreeing etc.

136.—(1) In all cases of trial by jury the judge shall have power to determine, after hearing the whole evidence or the evidence adduced on behalf of the plaintiff alone, whether there is any evidence in support of the plaintiff's case which ought to be submitted to the jury, and if in his opinion there is no such evidence, he may then, or after verdict, if he has reserved his decision, direct a nonsuit or dismiss the action. Power to direct nonsuit or dismiss action.

(2) The judge may direct the jury to answer any questions of fact stated to them by him and the jury shall answer them, and, subject to the provisions of subsection 1, upon their answers the judge shall enter such judgment as in his opinion may be proper. Submitting questions to jury.

(3) The judge shall determine the law and direct the jury thereon. R.S.O. 1914, c. 63, s. 144. Duty of Judge.

(4) When in the opinion of the judge the action is one that ought to be tried without a jury, the judge shall have power to direct that the action be taken out of their hands. 1921, c. 38, s. 5.

(5) Where in the opinion of the judge the jury motion is given for the purpose of delay he may strike it out on a summary application.

Fees for jury
fund.

137.—(1) There shall be paid to the clerk, on every action originally entered in his court, in addition to all costs or jury fees payable,—

(a) where the claim exceeds \$20 but does not exceed \$60,—three cents;

(b) where the claim exceeds \$60, but does not exceed \$100,—six cents;

(c) where the claim exceeds \$100,—twenty-five cents; and the same shall be taxed and allowed as costs in the cause.

Return.

(2) On or before the 15th day of January in every year the clerk shall return to the treasurer of the county a statement, under oath, showing the number of actions originally entered in his court during the year previous, in which the claim exceeded \$20 but did not exceed \$60, the number in which the claim exceeded \$60 but did not exceed \$100, and the number in which the claim exceeded \$100.

Fees to be paid
to county
treasurer.

(3) He shall, with the statement, pay over to the treasurer the fees payable under this section; and the treasurer shall keep an account of all money so received by him under the head of "Division Court Jury Fund."

Return in
cities forming
separate
divisions.

(4) The clerk of every court, the limits of which are wholly within a city, shall make the return and payment provided for by subsections 2 and 3, to the treasurer of the city who shall keep an account in the same manner as is provided in the case of a treasurer of a county.

Other cities
and separate
towns.

(5) In the case of cities, other than those provided for by subsection 4 and towns separated from the county, the amounts paid in by the clerks and the amount paid by the county treasurer to the clerks for jury fees shall be taken into account in settling the proportion of the charges to be paid by the city or town towards the cost of administration of justice. R.S.O. 1914, c. 63, s. 145 (1-5).

Fees of
jurors.

(6) The clerk shall pay each of the five jurors impanelled and sworn the sum of \$3, and the further sum of ten cents per mile for every mile in excess of two miles necessarily travelled from his place of residence to the place at which the court is held, and to each of the jurors not impanelled, but who attend during the sittings of the court in which they have been summoned and who do not attend as witnesses or litigants, the sum of \$1.50, and the further sum of ten cents per mile in excess of two miles necessarily travelled from his place of residence, but the judge shall have the power to increase or reduce the fee for the jurors not impanelled. 1921, c. 38, s. 6.

Certifying
payment
of jurors
and refund
to clerk.

(7) Payments made under subsection 6 shall be certified to by the judge and the treasurer of the county shall, upon presentation of the certificate, pay to the clerk the amount

which the certificate shows to have been paid to the jurors. 1922, c. 45, s. 2.

(8) This section shall not apply to a provisional judicial district. R.S.O. 1914, c. 63, s. 145 (7).

Case of
judicial
district.

PROCEEDINGS TO GARNISH DEBTS.

138. Subject to the provisions of section 7 of *The Wages Act*, where a debt or money demand of the proper competence of the division court, and not being a claim for damages, is due and owing to one party from another, or a judgment of a division court remains unsatisfied, in whole or in part, and a debt is owing or accruing to the debtor from any other person, the person to whom such first mentioned debt, money demand, or judgment is due and owing (hereinafter called the primary creditor), may attach and recover the debt owing or accruing to his debtor (hereinafter called the primary debtor) from any other person (hereinafter called the garnishee), or sufficient thereof to satisfy the claim of the primary creditor, subject always to the rights of other persons in respect of such debt. R.S.O. 1914, c. 63, s. 146.

Garnishment
of debts.
Rev. Stat.
c. 176.

As to attachment of wages see The Wages Act.

Rev. Stat.
c. 176.

139.—(1) In all cases under the provisions of sections 143 and 147, where the debt sought to be garnished is for wages or salary, there shall be filed with the clerk an affidavit showing the residence of the primary debtor and the nature of his occupation in the service of the garnishee at the time of the issuing of the summons (if then in such service), and stating whether the debt alleged or adjudged to be due by the primary debtor to the primary creditor was or was not incurred for board or lodging, and there shall also be endorsed upon or annexed to the summons served on the garnishee a memorandum to the like effect, and in the absence of such affidavit or memorandum the debt may be deemed by the garnishee not to have been incurred for board or lodging.

Memorandum
on garnishee
summons
where debt
attached is for
wages.

(2) If the primary debtor is alleged to be an unmarried person, having no family depending on him for support, a statement to that effect, verified by affidavit, shall be filed with the clerk and the statement shall also be endorsed upon or annexed to the summons served on the garnishee; and in the absence of such affidavit or statement, such person may be deemed by the garnishee to have a family depending on him for support. R.S.O. 1914, c. 63, s. 147.

Material where
debts due by
unmarried
persons.

Where the Primary Creditor's Claim is a Judgment.

140. After judgment has been recovered, application may be made to the judge, on behalf of the primary creditor, on affidavit stating when the judgment was recovered, and how much thereof remains unsatisfied, and that the deponent has

Attaching
order to be
granted on
judgment.

reason to believe, and does believe, that some one or more persons (naming them, or stating that he is unable to name them) is or are within Ontario and is or are indebted to the primary debtor, for an order that all debts owing or accruing to the primary debtor be attached to satisfy the judgment; and the order may be made in the prescribed form. R.S.O. 1914, c. 63, s. 148.

Service thereof to bind all debts, etc.

141.—(1) The service of the order on a garnishee shall have the effect, subject to the rights of other persons, of attaching and binding in his hands all debts then owing or accruing from him to the primary debtor, or sufficient thereof to satisfy the claim of the primary creditor, and payment by the garnishee into court of the debt so attached to the extent to which the judgment is unsatisfied, shall be to that extent a discharge of such debt. R.S.O. 1914, c. 63, s. 149.

Garnishee may pay in his own discharge.

(2) Any money paid into court under this section may be paid out of court to the primary creditor upon the order of the judge to be obtained upon notice to the primary debtor.

Payment to any but primary creditor void.

142. Payment by the garnishee after service on him of the order, otherwise than into court, except by leave of the judge, shall, to the extent of the primary creditor's claim and costs, be void; and the garnishee shall be liable to pay the same again, to the extent of the primary creditor's claim, unless the judge otherwise orders. R.S.O. 1914, c. 63, s. 150.

Primary creditor may summon garnishee.

143. Whether an attaching order is or is not made, the primary creditor may cause to be issued out of the court of the division in which the garnishee, or one of them, if there be joint garnishees, resides or carries on business, a summons in the prescribed form, upon or annexed to which shall be a memorandum showing the names of the parties as designated in the judgment, the date when, and the court in which, it was recovered, and the amount unsatisfied, and the summons shall be returnable either at any ordinary sittings of the court, or at such other time and place, to be named therein, as the judge may appoint. R.S.O. 1914, c. 63, s. 151.

Mode of service.

144. A copy of the summons and memorandum shall be served on the garnishee, within the time and in the manner provided for the service of a summons in other actions, and also on the primary debtor, unless the judge otherwise orders. R.S.O. 1914, c. 63, s. 152.

Service on corporation, whose head office is not in the Province.

145. In proceedings under section 143 where the garnishee is a body corporate, not having its chief place of business within Ontario, the summons shall be issued from the court in which the judgment was recovered, or, in case the judgment has been transferred, from the court to which it was trans-

ferred, and shall be served upon the agent of the body corporate whose office as such agent is nearest to the place where the court is held. R.S.O. 1914, c. 63, s. 153.

146. At the hearing of the summons, on proof of the amount owing or accruing from the garnishee to the primary debtor, and if no sufficient cause appears why it should not be paid and applied in satisfaction of the judgment, the judge may give judgment against the garnishee in the prescribed form for the amount owing or accruing from him, or sufficient thereof to satisfy the judgment: and execution against the garnishee may issue thereon, if due, or when and as it becomes due, or at such later period as the judge may order. R.S.O. 1914, c. 63, s. 154. Judgment at hearing.

. Where the Primary Creditor's Claim not a Judgment.

147.—(1) Where a judgment has not been recovered for the claim of the primary creditor, he may cause to be issued out of the court of the division in which the garnishees, or one of them if they are joint garnishees, reside or carry on business, a summons, (Form 4), with the particulars of the claim of the primary creditor against the primary debtor with reasonable certainty and detail attached thereto or endorsed thereon, and the summons shall be returnable as provided by section 143. Garnishee summons before judgment.

(2) As between the primary creditor and the primary debtor the summons shall be deemed a special summons, and all provisions of this Act applicable to a special summons and proceedings thereon shall apply. Summons to be deemed special summons.

(3) Where several garnishees reside or carry on business in the same division they may, by leave of the judge, be included in the same summons. Several garnishees included in summons.

(4) A copy of the summons and particulars shall be served on the primary debtor and on the garnishee in the manner provided for the service of a summons in other actions. R.S.O. 1914, c. 63, s. 155. Service of summons.

148. Where judgment is obtained against the primary debtor under the provisions of sections 90, 91 or 92, or is obtained at the trial, or where judgment is not then given, on proof of the service on the primary debtor of a copy of the summons and particulars, and of the debt due and owing by the primary debtor, the judge, on proof of the amount owing or accruing due to the primary debtor from the garnishee, may give judgment against the garnishee in the prescribed form for the amount so owing or accruing from him or sufficient thereof to satisfy the claim of the primary creditor and costs, which sum the garnishee shall pay into court towards the Judgment against garnishee.

satisfaction of the claim and costs; and, in default, execution may issue therefor, if due, or as it becomes due, or at such later period as the judge may order. R.S.O. 1914, c. 63, s. 156.

General Provisions.

All parties
interested may
show cause.

149.—(1) Whether the claim of the primary creditor is or is not a judgment, the garnishee and all other persons in any way interested in or to be affected by the proceeding may show any just cause why the debt sought to be garnished should not be paid to or applied in or towards satisfaction of the claim of the primary creditor.

Setting up
defences in
garnishee
proceedings.

(2) A garnishee who desires to set up a statutory or other defence or set-off or to dispute or admit liability in whole or in part, shall file with the clerk notice thereof with the particulars of such defence or set-off, or an admission of the amount owing or accruing by him, within eight days after service on him of the summons, and the clerk shall forthwith send by registered post to each of the other parties a copy of such defence, set-off or admission, and the primary creditor may file with the clerk a notice that he admits or disputes the defence or set-off or accepts or disputes the admission of liability.

Judgment in
default of
defence.

(3) The clerk shall forthwith send to the garnishee by registered post a copy of the notice, and in the absence of a defence or set-off the judge may, in his discretion, give judgment against the garnishee; and unless the primary creditor files a notice disputing such defence, set-off or admission of liability, the garnishee shall not be bound to attend at the trial, and the sum admitted to be owing or accruing by him shall be taken to be the correct amount of his liability, unless the judge shall otherwise order, in which latter case the garnishee shall be notified by the clerk by registered post, and shall have an opportunity of attending at a subsequent date and being heard before judgment is given against him.

Costs.

(4) The costs of all notices required to be given under this section, shall be costs in the cause, and in no case shall be payable by the garnishee, unless so ordered by the judge. R.S.O. 1914, c. 63, s. 157.

Effect of ser-
vice on gar-
nishee.

150. Service of a summons on the garnishee shall have the same effect and consequence as service of an attaching order. R.S.O. 1914, c. 63, s. 158.

Costs of
garnishee pro-
ceedings.

151. In giving judgment for the primary creditor, the judge may award to him the costs of the proceedings out of the amount found due from the garnishee to the primary debtor. R.S.O. 1914, c. 63, s. 159.

Application to
discharge
debt from
attachment.

152.—(1) Upon the application of a person entitled to or interested in any debt attached or bound in the hands of a garnishee made at any time before actual payment out of

court to the primary creditor, the judge may order that such debt be discharged from the claim of the primary creditor.

(2) A like order may be made, after the debt has been paid out of court to the primary creditor, in which case all parties shall be remitted to their original rights in respect thereto, except as against the garnishee, whose payment shall not be affected thereby, but shall be and remain an effectual discharge to him. R.S.O. 1914, c. 63, s. 160.

Order after money paid out of court.

153.—(1) The judge may, before giving judgment against the garnishee or at any time before actual payment out of court to the primary creditor, order such security as may be approved by him or by the clerk, to be given by or on behalf of the primary creditor, to abide by any order which may be made for repayment.

Security from primary creditor.

(2) The bond shall be to the clerk by his name of office, and shall enure for the benefit of all persons interested in or entitled to the debt, and, by leave of the judge and on such terms as he may impose, may be sued on in the name of the clerk for the time being, for the benefit of such persons. R.S.O. 1914, c. 63, s. 161.

Effect of bond

154.—(1) Where a person other than the primary creditor or primary debtor claims to be entitled to the debt owing or accruing from the garnishee or any part thereof by assignment or otherwise, the judge, after notice to all persons interested, may enquire into and decide upon the claim as the justice of the case may require.

Case of adverse claims.

(2) Where the amount claimed by any such person exceeds \$30, the provisions of section 124 and the following sections relating to juries shall apply so as to give any party to the proceeding a right to require a jury. R.S.O. 1914, c. 63, s. 162.

Right to jury in certain cases.

155. The judge may adjourn, from time to time, the hearing and other proceedings in garnishee cases, to allow time for giving omitted notices, or to produce further evidence, or for any other purpose, may require service on and notice to other additional persons, and may prescribe a form for any proceeding. R.S.O. 1914, c. 63, s. 163.

Judge may postpone or adjourn proceedings.

ARBITRATION.

156.—(1) The judge, with the consent of the parties or their agents, may order the action, with or without other matters in dispute between the parties, being within the jurisdiction of the court, to be referred to the arbitration of such person or persons, and in such manner and on such terms as he may deem just.

Reference to arbitration by order of judge or by consent.

Reference by
agreement.

(2) The partes to an action may by writing, signed by themselves or their agents, agree to refer the matters in dispute to the arbitration of a person or persons named in the agreement.

Agreement to
be filed.

(3) The agreement shall be filed with the clerk, and entered in the procedure book, as notices are entered. R.S.O. 1914, c. 63, s. 164.

Revocation of
reference.

157. The reference shall not be revocable by either party except by leave of the judge. R.S.O. 1914, c. 63, s. 165.

Award to be
entered as the
judgment.

158. The award shall be entered by the clerk as the judgment in the action, and he shall forthwith give notice thereof to the parties. R.S.O. 1914, c. 63, s. 166.

Judge may set
aside award.

159.—(1) The judge, on application to him within fourteen days after the entry of the award, may set it aside and remit the matters referred to the same arbitrator or arbitrators, or may order another reference to be made in the manner aforesaid.

Application
after time
limited.

(2) If reasonable excuse for the delay is shown to the satisfaction of the judge, the application may be made at any time within fourteen days after the expiration of the first mentioned fourteen days. R.S.O. 1914, c. 63, s. 167.

Arbitrators
may adminis-
ter oaths.

160. An arbitrator may administer an oath to the parties and to the witnesses examined before him. R.S.O. 1914, c. 63 s. 168.

CONFESSIONS OF DEBT.

Clerks and
bailiffs may
take confes-
sions.

161.—(1) A clerk or bailiff may take a confession or acknowledgment of debt from a defendant, in the prescribed form, which shall be witnessed by the clerk or bailiff at the time of the taking thereof; and upon the production of the confession or acknowledgment to the judge, and proof thereof by the oath of the clerk or bailiff, the judge may order that judgment be entered thereon.

Oath of
clerk or
bailiff.

(2) The oath shall state that the party making it has not received, and that he will not receive, anything from the plaintiff or defendant, or any other person, except his lawful fees, for taking the confession or acknowledgment, and that he has no interest in the demand sought to be recovered. R.S.O. 1914, c. 63, s. 169.

COSTS.

Judge's au-
thority as to
costs.

162.—(1) Unless otherwise provided, the costs of and incidental to all actions shall be in the discretion of the judge, who shall have full power to determine by whom and to what extent costs shall be paid.

(2) If the judge does not make an order as to costs they shall abide the event of the action. Costs to abide event except by order.

(3) Where the plaintiff does not appear or does not prove his claim, the judge may award to the defendant a sum for his trouble and attendance not exceeding what he would be entitled to if a witness on his own behalf, to be recovered by execution. Allowance to defendant for attendance.

(4) Where the plaintiff fails to recover judgment by reason of the court not having jurisdiction, the judge shall nevertheless have the power conferred by subsection 1, and the recovery of the costs awarded may be enforced by the same remedies by which costs of proceedings within the proper competence of the court are recoverable. R.S.O. 1914, c. 63, s. 170. Costs when action fails for want of jurisdiction.

163. Where in a contested action for more than \$100, and in the cases mentioned in clauses *b* and *c* of section 118, a counsel, solicitor or agent has been employed by the successful party in the conduct of the cause or defence, the judge may direct a sum of \$5, to be increased according to the difficulty and importance of the case to not more than \$25 or if the case occupies more than one day, to not more than \$50, be allowed to the successful party and the same shall be added to the costs. 1920, c. 34, s. 4. Counsel fees.

164. Where the defendant having disputed the plaintiff's claim, afterwards and before the opening of the court, confesses judgment or pays the claim so short a time before the sittings of the court that the plaintiff cannot in the ordinary way be notified thereof, and without such notice the plaintiff *bona fide* and reasonably incurs expenses in procuring witnesses or in attending at court, the judge may order the defendant to pay such costs or such portion thereof as to him may seem just. R.S.O. 1914, c. 36, s. 172. Costs of witnesses in certain cases.

JUDGMENT AND EXECUTION.

165.—(1) Where the judge gives judgment or makes an order for the payment of money, and default is made in payment of the whole or of any part thereof, the party in whose favour the order has been made shall be entitled to execution against the goods and chattels of the party in default. When money not paid, pursuant to order, execution to issue.

(2) The clerk, at the request of the party prosecuting the judgment or order, shall issue an execution (Form 5), to a bailiff of the court, or to a bailiff of any other court within the county, who by virtue thereof shall levy by distress and sale of the goods and chattels of the party in default such sum and costs, with interest thereon from the date of the order or of the entry of the judgment, as have been ordered to be paid and remain due, and shall pay the same over to the clerk. R.S.O. 1914, c. 63, s. 173. Form of execution.

Cross judgments may be set off.

166. If there are cross judgments between the parties, the party who has obtained judgment for the larger sum shall have execution for the excess and satisfaction for the remainder, and also satisfaction on the judgment for the smaller sum shall be entered; and if both sums are equal, satisfaction shall be entered upon both judgments. R.S.O. 1914, c. 63, s. 174.

Writs of execution where to be executed.

167. Except in actions brought under section 65, an execution or attachment shall not be executed out of the limits of the county over which the judge of the court from which the same issues has jurisdiction. R.S.O. 1914, c. 63, s. 175.

Effect of payment of execution before sale.

168. Where the party against whom an execution has been issued pays or tenders to the clerk or to the bailiff, before an actual sale of his goods and chattels, the amount to be levied or so much thereof as the party in whose favour the execution has issued agrees to accept in full of his debt, together with the fees to be levied, the execution shall thereupon be superseded, and the bailiff shall withdraw from possession. R.S.O. 1914, c. 63, s. 176.

Clerk to give notice to plaintiff of return of *nulla bona* in case of execution on a transcript of judgment.

169.—(1) The clerk, immediately after a return of *nulla bona* has been made to an execution issued on a transcript of judgment, shall forward by registered post to the plaintiff and to the clerk who issued the transcript a notice informing them of the date at which the execution issued, the date at which it was returned by the bailiff, and the return made.

Registration certificate to be filed.

(2) The clerk shall file among the papers in the action the post-office certificate of registration, and the absence from amongst the papers of the certificate shall be *prima facie* evidence against the clerk that the notice was not forwarded. R.S.O. 1914, c. 63, s. 177.

Enforcing claims under Creditors' Relief Act in division courts. Rev. Stat. c. 113.

170. Where a memorandum of the amount of a judgment or execution or a certificate of a claim within the jurisdiction of a division court is filed with a sheriff under *The Creditors' Relief Act*, and the amount is not paid in full, and the sheriff is unable to make the money thereon, the creditor may obtain from the sheriff a return according to the fact, and file the same with the clerk of the court in which the judgment was recovered, or, in the case of a certificate of a claim, with the clerk of the court of the division where the cause of action arose, or the debtor, or one of the debtors, if more than one, resides, and the clerk shall enter the return in his procedure book, and in the latter case the claim shall thereupon become a judgment of the court for the unpaid balance due thereon appearing by the return, and may be enforced in the same manner as a judgment of the division court. R.S.O. 1914, c. 63, s. 178.

171. In the case of the death of either or both of the parties to a judgment, the party in whose favour the judgment has been entered, or his personal representative in case of his death, may in the prescribed form revive the judgment against the other party, or his personal representative in case of his death, and may issue execution thereon. R.S.O. 1914, c. 63, s. 179.

Revivor of judgment in case of death of party.

172.—(1) Every execution against goods shall bear the date of its issue, and shall be returnable immediately after the execution thereof, and, if unexecuted shall remain in force for thirty days, unless renewed, but may be renewed from time to time in the prescribed manner by the clerk, at the instance of the execution creditor, for six months from the date of the renewal.

Execution, when dated and returnable.

Renewable.

(2) The execution so renewed shall have effect and be entitled to priority according to the time of the original delivery thereof to the bailiff. R.S.O. 1914, c. 63, s. 180.

Priority of execution.

173. Where the judge is satisfied by the oath of the execution creditor or by other testimony that he will be in danger of losing the amount of the judgment if compelled to wait till the day appointed for the payment thereof before an execution can issue, the judge may order an execution to issue at such time as he may deem just. R.S.O. 1914, c. 63, s. 181.

Judge may order an execution to issue before regular day.

174.—(1) Where an execution against goods is returned *nulla bona*, and the sum remaining unsatisfied on the judgment amounts to the sum of \$40 or upwards, the judgment creditor shall be entitled to an execution, (Form 6), against the land of the judgment debtor, and the clerk, at the request of the party prosecuting the judgment, shall issue an execution against the land of the judgment debtor directed to the sheriff of any county.

Executions against lands.

(2) The execution shall have the same force and effect as an execution issued from a county court.

Effect of execution.

(3) When an execution against lands has been placed in the hands of the sheriff he shall give notice thereof to the judgment debtor by registered letter addressed to him at his present or last known residence.

Notice to debtor.

(4) The sheriff shall make a return thereof, and pay any money made thereon to the clerk of the court out of which the execution issued.

Sheriff's return to be made to clerk.

(5) Until the judgment is fully satisfied, the execution creditor may, subject to section 175, pursue the same remedy for the recovery thereof as if the judgment had been obtained in the county court.

Further proceedings by execution creditor.

Duration and renewal of writ.

(6) The writ, if unexecuted, shall remain in force for three years only from its issue unless renewed, but may be renewed from time to time in the prescribed manner by the clerk at the instance of the execution creditor for three years from the date of the renewal.

Formal effect of renewal.

(7) The execution may be renewed by being marked on the margin with a memorandum signed by the clerk stating the day, month and year of the renewal, and a writ so renewed shall have effect and be entitled to priority according to the time of the original delivery thereof to the sheriff.

Evidence of renewal.

(8) The production of an execution purporting to be marked with the memorandum shall be *prima facie* evidence of its having been renewed.

Fees on writ against lands.

(9) The sheriff shall be entitled to the same fees as upon a writ of execution against land issued from a county court.

Certificate in lieu of return of execution.

(10) Where land is on hand for want of buyers a sheriff to whom such execution is directed may endorse thereon a return of "land on hand for want of buyers" and shall return a certificate of such endorsement to the clerk of the division court from whose office such execution issued in lieu of the writ; and such endorsement and the certificate so returned shall be deemed a return of the writ, and thereupon a writ of *venditioni exponas* may be issued by the clerk for the sale of such land and the original execution shall remain in force for the residue. R.S.O. 1914, c. 63, s. 182.

Further proceedings after execution against lands issued.

175. After an execution against lands has been issued under the next preceding section, no further proceedings shall be had in the court out of which the execution issued without an order of the judge, unless the judgment creditor or his agent makes and files with the clerk an affidavit stating,—

- (a) that the judgment remains unsatisfied in whole or in part;
- (b) the amount, if any, which has been paid upon the judgment;
- (c) that execution against land has been returned unsatisfied, or that he believes the judgment debtor has not sufficient land in the county, to the sheriff of which the execution was directed, to satisfy the judgment. R.S.O. 1914, c. 63, s. 183.

Bailiff after seizure of goods to endorse date of seizure and give notice of sale.

176. The bailiff, after making a seizure under an execution against goods, shall endorse thereon the date of the seizure, and shall immediately, and at least eight days before the time appointed for the sale, put up at three of the most public places in the division where any property liable to be sold under the execution has been taken, public notice, signed by himself, of the time and place within the division when

and where it will be exposed for sale; and the notice shall describe the property taken. R.S.O. 1914, c. 63, s. 184.

177. The property so taken shall not be sold until the expiration of eight days at least after the seizure thereof, unless upon the request in writing under the hand of the party whose property has been seized. R.S.O. 1914, c. 63, s. 185. Goods not to be sold until eight days after seizure.

178. A clerk, bailiff or other officer of the court shall not, directly or indirectly, purchase any property at any sale made by a bailiff under legal process, and every such purchase shall be absolutely void. R.S.O. 1914, c. 63, s. 186. Bailiff and other officers not to purchase goods seized.

179. Where a bailiff has seized property under an execution or attachment, and the action is afterwards settled between the parties, or the defendant makes an assignment for the general benefit of his creditors, the bailiff, until his fees and disbursements are fully satisfied, shall have a lien therefor upon so much of the property as will reasonably satisfy the same; but in the event of a dispute as to the proper amount of the fees and disbursements, the amount claimed therefor may be paid into court until the proper amount shall be certified by the judge, and on such payment into court the lien shall cease. R.S.O. 1914, c. 63, s. 187. Right of bailiff to fees on execution, etc., when action settled or assignment made.

TRANSCRIPT.

180.—(1) The clerk, upon the application of a person having an unsatisfied judgment in his favour, shall prepare a transcript of the judgment in the prescribed form, and shall send the same to the clerk of any other division court, whether in the same or any other county, with a certificate at the foot thereof signed by him, sealed with the seal of the court, and addressed to the clerk of the court to whom it is to be sent, stating the amount unpaid upon the judgment, the date at which the same was recovered, and the post-office address of the person applying for the transcript, and the clerk to whom the certificate is addressed shall, on the receipt of the transcript and certificate, enter the transcript and the amount due on the judgment according to the certificate in a book to be kept in his office for the purpose; and all proceedings may be taken for enforcing the judgment in such last mentioned court. Clerk to prepare transcript of unsatisfied judgment for transmission to any other division court.

(2) After a transcript has been issued under this section, no further proceedings shall be had in the court from which the transcript issued without an order from the judge, unless the person who obtained the transcript, or his agent, shall make and file with the clerk an affidavit stating.— Proceedings stayed in office from which transcript of judgment is issued.

(a) that the judgment remains unsatisfied in whole or in part;

- (b) that the execution issued out of the court to which the transcript was sent has been returned *nulla bona*, or that he believes the judgment debtor has not sufficient goods in the division of that court to satisfy the judgment,

and upon the affidavit being filed, the clerk may issue such other process as the applicant may be entitled to and may direct. R.S.O. 1914, c. 63, s. 188.

DEATH, ETC., OF BAILIFF WHILE EXECUTION OR ATTACHMENT UNEXECUTED.

Continuation
of proceed-
ings after
death of
bailiff.

181.—(1) In the event of the death, resignation, suspension or removal of a bailiff, after action taken by him under an execution or attachment, the proceedings may be continued by his successor.

Securities
given to the
bailiff.

(2) The benefit of all securities given to the bailiff shall enure to his successor in office. R.S.O. 1914, c. 63, s. 189.

EXAMINATION OF JUDGMENT DEBTORS.

Judgment
debtors may
be examined
at the instance
of their credi-
tors.

182.—(1) A party having an unsatisfied judgment may procure from the court out of which execution might issue, if the judgment debtor resides or carries on business within the limits of that court, a summons in the prescribed form.

Affidavit re-
quired before
judgment
summons.

(2) Before the summons is issued the judgment creditor, or his agent, shall make and file with the clerk an affidavit stating,—

- (a) that the judgment remains unsatisfied in whole or in part; and
- (b) that the deponent believes that the judgment debtor sought to be examined is able to pay the amount due in respect of the judgment or some part thereof, or that he has rendered himself liable to be committed to gaol under this Act. R.S.O. 1914, c. 63, s. 190 (1, 2).

Examination
of judgment
debtor.

(3) The summons shall be served personally upon the judgment debtor at least eight days before the return day, and if he appears he may be examined upon oath as to any and what debts are owing to him and touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which formed the subject of the action, and as to the means and expectation he then had, and as to the property and means he still has of discharging the judgment debt, and as to the disposal he has made of any property. R.S.O. 1914, c. 63, s. 190 (3), *part*.

(4) The party obtaining the summons and all witnesses whom the judge thinks requisite may be examined upon oath, touching the inquiries. Examination of witnesses.

(5) The examination shall not be held in open court unless the judge so directs. Place of examination.

(6) The costs of the summons and of all proceedings thereon shall be costs in the action, unless the judge otherwise directs. Costs.

(7) If after the examination the judge makes no order against the party examined, no further summons shall issue out of the same court against him at the suit of the same or any other creditor, except upon an affidavit satisfying the judge that since the examination the party has acquired the means of paying, or, upon facts not before the court upon the examination, that he did not then make a full disclosure of his estate, effects and debts. R.S.O. 1914, c. 63, s. 190 (4-7). Party examined and discharged not to be again summoned. Exception.

183. If the party summoned—

- (a) does not attend as required by the summons, or at any subsequent date to which the hearing or examination is adjourned, or give a sufficient reason for not attending; or When judgment debtor may be committed to gaol.
- (b) attends and refuses to be sworn or to answer such questions as in the opinion of the judge are proper, or, if it appears to the judge, by the examination of the party or by other evidence, that he
- (c) obtained credit from the judgment creditor or incurred the debt or liability under false pretences, or by means of fraud or breach of trust; or
- (d) has made or caused to be made any gift, delivery or transfer of any property, or has removed or concealed the same with intent to defraud his creditors or any of them; or
- (e) had, when or since judgment was obtained against him, sufficient means and ability to pay the debt or damages or costs recovered against him, either altogether or by the instalments which the court, in which the judgment was obtained, ordered, without depriving himself or his family of the means of living, and that he has wilfully refused or neglected to pay the same as ordered.

the judge may order him to be committed to the common gaol of the county in which he resides or carries on business, for any period not exceeding forty days. R.S.O. 1914, c. 63, s. 191, *part*.

When party may be committed for non-attendance.

184.—(1) A party failing to attend shall not be liable to be committed for the default, unless the judge is satisfied that his non-attendance is wilful.

Costs allowed him in certain cases.

(2) If at the hearing it appears to the judge by the examination of the party, or otherwise, that he ought not to have been summoned, or if the judgment creditor or his agent does not appear, the judge shall award the party summoned compensation for his trouble and attendance, to be recovered against the judgment creditor in the same manner as a judgment of the court. R.S.O. 1914, c. 63, s. 192.

Judgment summons where principal and interest sued for separately.

185. Where a judgment has been recovered in an action which, but for subsection 2 of section 59, could not have been recovered in the division court, the judgment debtor shall not be committed where a judgment debtor could not have been committed upon or in respect of a judgment recovered in a higher court, or upon or by reason of an examination upon such a judgment. R.S.O. 1914, c. 63, s. 193.

Warrant of commitment.

186.—(1) Where an order of commitment has been made, the clerk shall issue, under the seal of the court, a warrant of commitment in the prescribed form directed to the bailiff of any court within the county, upon which shall be endorsed a memorandum of the amount upon payment of which the party is entitled to be discharged from custody, and the bailiff may, by virtue of the warrant, take the party and deliver him to the keeper of the gaol in which he has been directed to be imprisoned.

Constables, etc., to execute warrants.

(2) All constables and other peace officers within their respective jurisdictions shall aid in the execution of the warrant, and the keeper of the gaol shall receive and keep the party therein until discharged under the provisions of this Act, or otherwise, in due course of law. R.S.O. 1914, c. 63, s. 194.

When debtor in custody shall be discharged.

187. A party may be discharged out of custody,—

(a) by order of the Judge; or

(b) when he has paid to the keeper of the gaol the amount endorsed on the warrant; or

(c) upon the certificate of the clerk that such amount has been paid to him. R.S.O. 1914, c. 63, s. 195.

Judge may rescind order and may alter and modify the same.

188.—(1) The judge may rescind or alter the order for payment, and make any further or other order for the payment of the debt or damages recovered and costs forthwith, or by instalments, or in any other manner that he thinks reasonable. R.S.O. 1914, c. 63, s. 196 (1).

(2) The judge may rescind or alter or stay the operation of any order of commitment made by him, whether or not

the same has been acted on. R.S.O. 1914, c. 63, s. 196 (2), *part*.

189.—(1) A party having an unsatisfied judgment against an incorporated company may issue a summons calling upon any officer of the company to attend before the judge and submit to examination as to the property and assets of the company and its dealings with them and if the person summoned fails to attend or to submit to examination he shall be liable to be committed to the common gaol for any period not exceeding forty days. Examination of officer of company.

(2) The summons shall be issued and served as nearly as may be in the same manner as in the case of a summons to a judgment debtor. *See* Con. Rule 581.

190. Imprisonment under this Act shall not extinguish the judgment, or protect the judgment debtor from being summoned anew and imprisoned for any new fraud or other default rendering him liable to be imprisoned, or deprive the judgment creditor of the right to execution on his judgment. R.S.O. 1914, c. 63, s. 197. Debt not to be extinguished by imprisonment.

191. Every clerk, on or before the 15th day of January in every year, shall make to the Inspector a return showing the number of judgment debtors who, during the twelve months ending the 31st day of December next preceding, were ordered to be committed under each of the heads mentioned in section 183. R.S.O. 1914, c. 63, s. 198. Annual return of commitment of judgment debtors.

ABSCONDING DEBTORS.

192. Where a person indebted in a sum not less than \$4. either for debt or damages arising upon a contract, and recoverable in or upon a judgment of a division court, Absconding debtors.

- (a) absconds from Ontario, leaving personal property liable to seizure under execution for debt in any county; or
- (b) attempts to remove such personal property out of Ontario or from one county to another therein with intent to defraud; or
- (c) keeps concealed to avoid service of process,

the clerk of any division court, upon the application of the creditor, and upon his filing an affidavit in the prescribed form made by him, his agent, or servant, shall issue a warrant in the prescribed form, directed to the bailiff of the court from which the same issued, or to a constable of the county, commanding him to attach, seize, take and safely keep all the personal estate and effects of such person within the county, liable to seizure under execution for debt, or a sufficient part Warrant for attachment.

thereof to secure the sum mentioned in the warrant with costs, and to return the warrant forthwith to the court. R.S.O. 1914, c. 63, s. 199.

When county judge or justice of the peace may issue attachments, etc.

193. The affidavit in the next preceding section mentioned may be taken before a judge or a justice of the peace, and, upon the same being filed with him, he may issue a warrant under his hand and seal in the form mentioned in the next preceding section, and he shall forthwith transmit the affidavit to the clerk of the court within whose division the same was taken, to be by him filed. R.S.O. 1914, c. 63, s. 200.

Bailiff or constable to seize and make inventory.

194. Upon receipt of a warrant by the bailiff or constable, and upon being paid his lawful fees, including the fees for appraisement, he shall forthwith execute the warrant, and make a true inventory of all the estate and effects which he seizes and takes by virtue thereof, and shall, within twenty-four hours after seizure, call to his aid two freeholders, who, being first sworn by him to appraise the estate and effects seized, shall then appraise the same, and the bailiff or constable shall forthwith return the inventory attached to the appraisement to the clerk. R.S.O. 1914, c. 63, s. 201.

Proceedings may be continued in same court.

195. In an action commenced by attachment the proceedings may be conducted to judgment and execution in the court of the division within which the warrant issued. R.S.O. 1914, c. 63, s. 202.

Proceedings commenced before attachment.

196. Where proceedings have been commenced before the issue of an attachment they may be continued to judgment and execution in the court in which the proceedings were commenced. R.S.O. 1914, c. 63, s. 203.

Property attached may be sold under execution.

197. The property attached upon a warrant of attachment shall be liable to seizure and sale under the execution to be issued upon the judgment, and if the property was perishable and has been sold, the proceeds thereof shall be applied in satisfaction of the judgment. R.S.O. 1914, c. 63, s. 204.

Plaintiff not to divide cause of action.

198. A plaintiff shall not divide a cause of action into two or more actions for the purpose of bringing the same within the provisions of the next six preceding sections, but a plaintiff having a cause of action for which, but for the amount of the claim, an attachment might be issued may abandon the excess, and the judgment shall be a full discharge of all demands in respect of the cause of action, and the entry of judgment shall be made accordingly. R.S.O. 1914, c. 63, s. 205.

If several attachments issued. Rev. Stat. c. 114.

199. Subject to the provisions of *The Absconding Debtors Act*, where there are several attachments against a party, the proceeds of the property attached shall not be paid over to the

attaching creditors according to priority, but shall be rateably distributed among such of them as obtain judgment against the debtor, in proportion to the amounts actually due upon their judgments; and no distribution shall take place until, in the opinion of the judge, reasonable time has been allowed to the creditors to proceed to judgment. R.S.O. 1914, c. 63, s. 206.

200. Where the proceeds of the property are insufficient to satisfy the claims of all the attaching creditors, a creditor shall not be allowed to share, unless he sued out his attachment and gave notice thereof to the clerk of the court out of which the first attachment issued or into which it was returnable, within one month next after the issue of the first attachment. R.S.O. 1914, c. 63, s. 207.

If goods insufficient to satisfy claims of all attaching creditors.

201.—(1) Where property is attached under the provisions of the next nine preceding sections by a constable, it shall be forthwith handed over to the bailiff of the court out of which the warrant of attachment issued, or into which it was made returnable.

Goods seized by constable to be delivered to bailiff.

(2) Property attached by a bailiff under the provisions of the next nine preceding sections, and the property delivered to him under the provisions of subsection 1, shall remain in custody of the bailiff; and he shall keep it until disposed of according to law. R.S.O. 1914, c. 63, s. 208.

Custody of goods seized under attachment.

202.—(1) Where a person against whom an attachment has issued, or any person on his behalf, executes and files in the court to which the attachment, or first attachment if there are more than one, has been returned, or is returnable, a bond with good and sufficient sureties, to be approved by the judge or clerk, binding the obligors, jointly and severally, to the clerk, in double the appraised value of the property attached, with a condition that the debtor (naming him) will, whenever thereunto required by order of the judge, pay into court a sum sufficient to satisfy the claims of all creditors who may be entitled to share in the proceeds of the property or the value of the property attached, or will produce the property to satisfy the judgments, the clerk may supersede the attachment, and the property attached shall be restored.

On what terms goods attached may be restored.

(2) Subject to the provisions of section 199, if, within one month after the property has been attached, the person against whom the attachment has issued, or some person on his behalf, does not appear and give such bond, execution may issue as soon as judgment has been recovered and the property attached, or so much thereof as may be necessary to satisfy the judgment and costs, may be sold for the satisfaction thereof, or if the property has been previously sold as perish-

Sale of goods if the debtor does not appear and give security.

Perishable goods.

able so much of the proceeds thereof as may be necessary may be applied to satisfy the judgment and costs. R.S.O. 1914, c. 63, s. 209.

Proceedings
against
debtors where
process not
previously
served.

203.—(1) Where a summons has not been served before the issue of a warrant of attachment, it may be served personally or by leaving a copy at the last place of abode or business of the defendant with any grown person residing there, or by leaving the copy at such place if no grown person be there found.

Costs.

(2) If it appears to the judge at the trial that the creditor who sued out an attachment had not reasonable or probable cause for taking the proceedings, the judge shall order that no costs be allowed to the creditor. R.S.O. 1914, c. 63, s. 210.

Perishable
goods how
disposed of.

Rev. Stat.
c. 114.

204. Subject to the provisions of *The Absconding Debtors Act*, where perishable property has been attached, the bailiff who has the custody thereof, the same having been first appraised, may, at the request of the attaching creditor, expose and sell the same at public auction to the highest bidder, giving at least eight days' notice at the office of the clerk and at two other public places within his division, of the time and place of sale, if the property attached will admit of being so long kept, otherwise he may sell the same at his discretion. R.S.O. 1914, c. 63, s. 211.

Creditors may
be required to
indemnify the
defendant.

205.—(1) It shall not be compulsory upon the bailiff or constable to attach, or upon the bailiff to sell perishable property until the attaching creditor has given a bond to the defendant, with good and sufficient sureties to the satisfaction of the bailiff, in double the amount of the appraised value of the property, conditioned that the attaching creditor will repay the value thereof, together with all costs and damages incurred in consequence of the attachment and sale in case judgment be not obtained by him, and the bond shall be filed with the clerk.

Application
of proceeds of
sale.

(2) The money made shall be paid over by the bailiff to the clerk, to be dealt within the manner hereinbefore provided. R.S.O. 1914, c. 63, s. 212.

Enforcing
security given
under Act.

206.—(1) A bond given in the course of any proceeding under this Act may be sued on in any division court of the county wherein the same was executed, notwithstanding that the penalty in the bond exceeded the sum of \$100.

Delivery of
bond to party
entitled.

(2) The bond shall be delivered to any person entitled to it, upon the order of the judge, to be enforced or cancelled as the case may require. R.S.O. 1914, c. 63, s. 213.

CLAIMS OF LANDLORDS AND OTHERS IN RESPECT TO GOODS
SEIZED.

207. In this and the next following six sections,

Interpretation

(a) the word "landlord" shall include the person "Landlord," entitled to the immediate reversion of land, or, if it be held in joint tenancy, coparcenary or tenancy in common, any one of the persons entitled to the reversion; and

(b) the word "agent" shall mean any person usually "Agent," employed by the landlord in the letting of land or in the collection of the rents thereof, or specially authorized by writing under the hand of the landlord to act in any particular matter. R.S.O. 1914, c. 63, s. 214; 1914, c. 2, sched. (20).

208.—(1) Where a claim is made to or in respect of pro- Claims of
perty or security taken in execution or attached under the landlords, etc.,
process of a division court, or the proceeds or value thereof, to goods seized
by a landlord for rent, or by a person other than the party in execu-
against whom the process issued, then, subject to the provi- tion, how to
sions of *The Absconding Debtors Act*, upon application of the be adjusted.
bailiff or officer charged with the execution of the process, Rev. Stat.
either before or after an action has been brought against him, c. 114.
the clerk shall issue a summons calling before the court out of
which the process issued, or the court for the division in
which the seizure or attachment under the process was made,
the party who issued the process and the person making the
claim, and thereupon any action which has been brought in
the Supreme Court or in any other court in respect of the
claim, shall be stayed.

(2) The court in which the action has been brought, or a Costs.
judge thereof, on proof of the issue of the summons, and that
the property or security was taken in execution or upon
attachment, may order the party bringing the action to pay
the costs of all proceedings, had in the action after the issue
of the summons out of the division court.

(3) The judge shall adjudicate upon the claim, and make County judge
such order between the parties in respect thereof, and of the to adjudicate
costs of the proceedings as to him may seem just, and shall on claims.
also adjudicate between the parties, or either of them, and the
bailiff or officer in respect of any claim for damages arising
out of the execution of the process by the bailiff or officer,
although the amount of the damages claimed or awarded is
beyond the jurisdiction of a division court, and may make
such order in respect thereof, and of the costs of any pro-
ceedings as to him may seem just.

Enforcing order.

(4) The order may be enforced in like manner as an order made in an action.

New trial.

(5) The judge, upon the application of the execution or attaching creditor or the claimant, or the bailiff or officer, may grant a new trial as in other cases, and may in the meantime stay proceedings.

Where more than one execution or attachment has issued.

(6) Where the bailiff or officer has executions or attachments for different persons against the same property it shall not be necessary to make a separate application on each execution or attachment; but he may use the names of the execution or attaching creditors collectively, in the application, and the summons may issue in the name of the creditors as plaintiffs.

Rights of parties as to defence and as to costs.

(7) The parties and the bailiff or officer shall have the same rights of defence and counter-claim, including in all cases the right and liability to costs, as would exist had an action, within the jurisdiction of the court, been brought to recover the damages. R.S.O. 1914, c. 63, s. 215.

Provisions in relation to rents due to landlords.

209.—(1) The landlord of a tenement in or upon which property is taken under an execution, may, by notice in writing, signed by himself or his agent, stating the terms of the holding and the rent payable, delivered to the bailiff or officer making the levy, claim any rent due and in arrear at the time of the taking in execution not exceeding the rent of four weeks where the tenement has been let by the week, and not exceeding the rent for two terms of payment where the tenement has been let for any other term less than a year, and not exceeding in any case the rent for one year.

Notice of claim for rent.

(2) Notice of the claim may be given at any time before the return of the process, notwithstanding that the property may in the meantime have been removed from the premises upon which it was seized and where the property of a tenant is sold within ten days after seizure, the money realized shall remain in court until the expiration of the ten days to answer the claim of the landlord; and where the money has been paid into court the notice may be directed to the clerk with like effect as if given to the bailiff or officer, before the sale of the property seized.

How the bailiff is to proceed.

(3) The bailiff or officer making the levy shall also distrain for the amount of the rent claimed, and the costs of the distress, but shall not sell the property, or any part thereof, until after the expiration of eight days after the distress.

Fees of bailiff in such cases.

(4) For every distress for rent in arrear the bailiff or officer shall be entitled to have as costs of the distress, instead of the fees allowed by this Act, the fees allowed by *The Costs of Distress Act*.

Rev. Stat. c. 110.

(5) If any replevin is made of the property distrained, so much of the property taken under the execution shall be sold as will satisfy the money and costs for which the execution issued and the costs of the sale, and the surplus of the sale, if any, and the property so distrained shall be returned as in other cases of distress for rent and replevin. Sale where replevin made.

(6) An execution creditor shall not have his debt satisfied out of the proceeds of the execution and distress, or of the execution only, where the tenant replevies, until the landlord who conforms to the provisions of this Act has been paid the rent in arrear for the periods hereinbefore mentioned. R.S.O. 1914, c. 63, s. 216. Priority of landlord's claim.

OFFENCES AND PENALTIES.

Contempt of Court.

210. If a person wilfully insults the judge or any officer of a division court during his sitting or attendance in court, or interrupts the proceedings of the court, or creates a disturbance within the court room or within hearing of the court, any bailiff or officer of the court may, by direction of the judge, take the offender into custody and bring him before the judge, and the judge may impose upon him a fine not exceeding \$20, and in default of immediate payment may, by warrant under his hand and seal, commit the offender to the common gaol of the county for a period not exceeding one month, unless the fine and costs with the expense attending the commitment are sooner paid. R.S.O. 1914, c. 63, s. 217. Contempt of court.

Resisting Officers.

211.—(1) If a person interferes with a bailiff or officer, or his deputy or assistant, while in the execution of his duty, or makes or attempts to make a rescue of any property seized or attached under process of the court, he shall incur a penalty not exceeding \$20, to be recovered by order of the court, or on summary conviction before a justice of the peace, and shall also be liable to be imprisoned, by order of the court or justice, for any term not exceeding three months. Interfering with bailiff.

(2) The bailiff or officer, or any peace officer, may take the offender into custody, with or without warrant and bring him before the court or justice. R.S.O. 1914, c. 63, s. 218. Arrest of offender.

Misconduct of Clerks, Bailiffs, etc.

212.—(1) Upon a complaint in writing that a bailiff or officer, acting under colour or pretence of process of the court, is guilty of extortion or misconduct, or does not duly pay or account for all money levied or received by him by virtue of his office, the judge may, at a sittings of the court, enquire Misconduct of bailiffs and officers.

into the matter in a summary way, and for that purpose may summon and enforce the attendance of all necessary persons, and make such order thereupon for the repayment of any money extorted, or for the due payment of any money levied or received, and for the payment of such damages and costs to the person aggrieved, as he may think just.

Enforcing
order for
payment by
bailiff.

(2) In default of payment of the money ordered to be paid by the bailiff or officer within the time mentioned in the order for the payment thereof, the judge may, by warrant under his hand and seal, cause such sum to be levied by distress and sale of the goods of the offender, together with the reasonable charges of the distress and sale, and in default of such distress or summarily in the first instance, or where payment is not made forthwith, if so ordered, may commit the offender to the common gaol of the county for a period not exceeding three months, unless the money and costs are sooner paid. R.S.O. 1914, c. 63, s. 219.

Extortion.

213. If a clerk, bailiff, or other officer is guilty of extortion he shall, upon proof thereof before the court, be forever disqualified to hold any office of profit or emolument in a division court, and shall also be liable in damages to the party aggrieved. R.S.O. 1914, c. 63, s. 220.

Negligence of Bailiffs.

Bailiff
neglecting
duty in rela-
tion to execu-
tion.

214. If a bailiff, by neglect, connivance or omission, loses the opportunity of levying an execution or taking property under an attachment, or unduly delays to levy or attach, the judge, upon complaint of the party aggrieved, and upon proof of the fact alleged, may order the bailiff to pay such damages as the party aggrieved appears to have sustained, not exceeding the sum for which the execution or attachment issued; and upon demand being made therefor, and on his refusal to satisfy the same, payment may be enforced by such means as are provided for enforcing judgments. R.S.O. 1914, c. 63, s. 221.

ENFORCING PAYMENT OF FINES.

Enforcing
payment of
fines.

215. A fine imposed by the judge under authority of this Act may be enforced by his order in like manner as a judgment. R.S.O. 1914, c. 63, s. 222.

GENERAL PROVISIONS WITH REGARD TO ACTIONS FOR THINGS DONE UNDER THIS ACT.

Distress not
to be deemed
unlawful or
persons mak-
ing it tres-
passers by
reason of de-
fect in pro-
ceedings.

216. A levy or distress by virtue of this Act shall not be deemed unlawful, or the person making the same be deemed a trespasser, on account of any defect or want of form in any proceeding relating thereto, nor shall the person levying or distraining be deemed a trespasser from the beginning, on

account of any irregularity afterwards committed by him; but the person aggrieved by the irregularity may recover full satisfaction for the special damage sustained by him. R.S.O. 1914, c. 63, s. 223.

217.—(1) In cases not expressly provided for by this Act or by the rules, the judge may, in his discretion, adopt and apply the general principles of practice in the Supreme Court to actions and proceedings in the division courts. R.S.O. 1914, c. 63, s. 226 (1). Practice of the High Court may be followed in unprovided cases.

(2) Nothing herein contained shall authorize the taxation or allowance of costs to any officer of the court, other than those provided for by this Act, or in the tariff of fees. R.S.O. 1914, c. 63, s. 226 (2). *part.* Limitations as to costs.

218. The existing rules made by the Board of County Judges, except in so far as they are inconsistent with the provisions of this Act, are hereby confirmed. R.S.O. 1914, c. 63, s. 227. Existing Rules confirmed.

PROCEEDINGS NOT TO BE SET ASIDE FOR MATTERS OF FORM.

219. No proceedings shall be quashed or vacated for any matter of form. R.S.O. 1914, c. 63, s. 228. Defects in form.

PART II.

APPLICABLE ONLY TO PROVISIONAL JUDICIAL DISTRICTS.

TRIAL BY JURY.

220. Unless exempt under *The Jurors' Act* all male persons between twenty-one and sixty years of age who reside in the division, and who are subjects of His Majesty by birth or naturalization, may be summoned to serve as jurors at any division court. R.S.O. 1914, c. 63, s. 229. Who liable to serve as jurors. Rev. Stat., c. 96.

221. The clerk and a justice of the peace resident in the division, or in case there is no justice of the peace so resident, then a justice of the peace residing in an adjoining division, shall select the persons to serve as jurors for the trial of actions required to be tried by or before a jury. R.S.O. 1914, c. 63, s. 230. Who to select jurors.

222. The party applying for a jury shall deposit with the clerk for the expenses of such jury the sum of \$6, and each juror who attends shall be paid by the clerk the sum of fifty cents. R.S.O. 1914, c. 63, s. 231. Deposit by person requiring.

JURISDICTION.

Jurisdiction
of courts.

223. The courts, in addition to the jurisdiction conferred by Part I, shall have jurisdiction in personal actions otherwise within the jurisdiction of a division court where the amount claimed does not exceed \$200. R.S.O. 1914, c. 63, s. 232; 1921, c. 38, s. 8.

ORDER FOR ARBITRATION ON CONSENT.

Matters in
dispute not
over \$800
may be re-
ferred by
judge
with consent
to arbitra-
tion.

224.—(1) The judge may, with the consent in writing of the parties, order an action with or without other matters in dispute between the parties and within the jurisdiction of the court as to subject-matter, irrespective of amount if not exceeding \$800, to be referred to arbitration to such persons, and in such manner and on such terms as he thinks just.

Application
of Part I.

(2) All the provisions of Part I, as to arbitration shall in other respects apply to a reference under this section. R.S.O. 1914, c. 63, s. 233.

TRIAL BY JUDGE ON CONSENT.

Parties may
agree that
the judge
shall try any
matter not
over \$800.

225.—(1) If the parties agree by writing signed by them to refer causes of action, claims and demands to a judge and that he may try and determine the same, the judge shall have power and jurisdiction so to do, if the subject matter in dispute does not exceed \$800 in amount, and is otherwise within the jurisdiction of a division court.

Submission
to be made
in duplicate.

(2) The agreement shall be in duplicate, and one of the duplicates shall be filed with the judge and the other with the clerk of the court in which the action is to be tried, and the court shall thereupon have jurisdiction in respect of the matter referred.

May be filed
and proceed-
ings thereon
had to judg-
ment in the
division court.

(3) Upon the agreement being filed the plaintiff may enter his claim in such division, and sue out a summons thereupon as in ordinary cases, and the proceedings in the action may be conducted to judgment and execution, irrespective of the amount recovered if it does not exceed \$800, in the same manner as other actions in such court. R.S.O. 1914, c. 63, s. 234.

APPEAL.

Appeal.

226.—(1) An appeal shall lie to a divisional court from a judgment under the next preceding section and from an order setting aside an award made pursuant to a reference made under the provisions of section 224.

Application
of Part I.

(2) The provisions of Part I, as to appeals shall apply to an appeal under this section. R.S.O. 1914, c. 63, s. 235.

227. Upon an application for a new trial, in an action wherein either party may appeal, personal service may be effected, or all papers requiring service may be delivered to the clerk of the court where the action was tried, or left at his office for the person entitled thereto, and the clerk shall forthwith send by registered post all such papers to the person entitled to the same or his agent. R.S.O. 1914, c. 63, s. 236.

Service on
application
for new
trial.

FORM 1.

(Section 25.)

COVENANT BY CLERK OR BAILIFF.

Know all men by these presents, that we J. B., Clerk (or Bailiff as the case may be) of the Division Court, in the County (or United Counties or District) of S. S. of _____, in the said County or District of (Esquire), and P. M., of _____ (Gentleman) do hereby jointly and severally for ourselves, and for each of our heirs, executors and administrators, covenant and promise that J. B., Clerk (or Bailiff) of the said Division Court shall duly pay over to every person entitled to the same, all such moneys as he shall receive by virtue of the said office of Clerk (or Bailiff) and shall and will well and faithfully do and perform the duties imposed upon him as such Clerk (or Bailiff) by law, and shall not misconduct himself in the said office to the damage of any person being a party in any legal proceeding; (in the case of a Clerk's covenant insert: and shall pay over to any Bailiff or Bailiffs of the Division Courts the fees to which he or they may become entitled under the tariff of fees, unless where the Clerk and the Bailiff otherwise agree in writing); nevertheless, it is hereby declared that no greater sum shall be recovered under this covenant against the several parties hereto than as follows, that is to say:

Against the said J. B. in the whole,	— dollars.
Against the said S. S. in the whole,	— dollars.
Against the said P. M. in the whole,	— dollars.

In Witness Whereof, we have to these presents set our hands and seals, this _____ day of _____ 19 ____.

Signed, sealed and delivered,
in the presence of _____

R.S.O. 1914, c. 63, Form 1.

FORM 2.

(Section 30.)

PROCEDURE BOOK.

Division Court of the
 No. 19
 Ensuing Sittings the day of 19
 vs.
 19 of of

	No. of initial letter of item of tariff.	Bailiff	Clerk.	\$
<p>Received particulars of plaintiff's claim () for \$, and \$ towards costs</p> <p>Issued () summons to Summons ret'd. Served the day of 19 , by miles,</p> <p>The defendant having been served with special summons and particulars of claim, and not disputing the same,</p> <p>it is adjudged that the plaintiff recover \$ for debt, and \$ for costs.</p>				

Clerk.

R.S.O. 1914, c. 63, Form 2.

FORM 3.

(Section 30.)

FOREIGN PROCEDURE BOOK.

Division Court of the

No.

vs.

19

Received summons from	Division Court,
County of	Rec.
Issued summons to Bailiff	Aff.
Summons ret'd. Served the	day of
by	Post.
Ret'd to Clerk of	Division Court,
County of	Bailiff's fees.
	Miles
	Ser.
	Att.

R.S.O. 1914, c. 63, Form 3.

FORM 4.

(Section 147.)

SUMMONS IN GARNISHEE PROCEEDINGS.

No. , A.D. 19

In the Division Court, of the
District of

Between A. B., Primary Creditor.
and
C. D., Primary Debtor,
and
E. F., Garnishee.

To the above-named Primary Debtor and Garnishee:—

Take notice that the above-named Primary Creditor claims from you, the Primary Debtor, dollars, as shown by his particulars of claim herewith. If the amount of the claim with lawful costs be paid to the Clerk of this Court within days from the service hereof upon you, the Primary Debtor, no further proceedings shall be taken.

Unless within days after the service of this summons on you, the Primary Debtor, you enter with the Clerk of this Court a notice in writing that you intend to dispute the claim, the Clerk may enter judgment and issue execution against you.

In case you, the Primary Debtor, give such notice disputing the claim, the action will be tried at the sittings of this Court to be held at in the said County or District of next after the expiration of days from the time this summons is served on you and the sittings of the Court are set forth below.

Given under the seal of the Court, this
A.D. 19 .

day of

G. H.,
Clerk.

NOTICES AND WARNINGS TO PRIMARY DEBTOR AND GARNISHEE.

No. 1. If the primary debtor disputes the primary creditor's claim, or any part of it, he must leave with the clerk, within days after the day of the service hereof, a notice to the effect that he disputes the claim, or if not the whole claim, how much he disputes, in default whereof final judgment may be signed for the whole claim, or such part as is not disputed at any time within one month after the return of the summons, or afterwards by leave of the judge, without prejudice to the primary creditor's right to recover for the remainder of the claim.

No. 2. If the primary debtor desires to set off any demand or counterclaim against the primary creditor at the trial or hearing, or to take the benefit of any statute of limitations or other statute, notice thereof in writing together with the particulars of the set-off or counterclaim must be left with the clerk of the court and served on the primary creditor, or left at his usual place of abode, if he is living within the division, not less than five days before the day on which the action will be tried, and in case the primary creditor does not reside within the division such notice and particulars must be left with the clerk for him.

No. 3. On the day of trial the primary debtor must bring all the books and papers necessary to prove his case, or in any way connected with it or with his transactions with the primary creditor.

No. 4. Summons for witnesses and the production of documents may be obtained at the office of the clerk upon payment of the proper fee.

No. 5. The ensuing sittings of the court will be held as follows, viz.:

At o'clock a.m., on Monday, the day of
A.D. 19 , at o'clock a.m., on Tuesday, the
day of , A.D. 19 , etc.

(Here may be inserted the time of one or more subsequent sittings specifying the hour of the day of the week and month, plainly written in words of full length, and not expressed by figures or contraction of words.)

No. 6. In any case in which an order may be made changing the place of trial, application must be made therefor to the judge of the court within eight days after the day of service hereof (where the service is required to be ten days before the return) or within twelve days after the day of such service (where the service is required to be fifteen days or more before the return).

No. 7. The garnishee is entitled to set up any statutory or other defence or set-off, or to dispute or admit liability in whole or in part, and the garnishee and all other persons interested in or in any way affected by the proceedings may also show any other just cause why the debt sought to be garnished should not be paid to or applied in or towards satisfaction of the claim of the primary debtor, and if they desire to do so they must file with the clerk notice thereof with particulars of such defence or set-off, or an admission of the amount owing or accruing from them, or either of them, within eight days after the service of the summons.

No. 8. You, the said garnishee, are hereby notified that from and after the time of the service of this summons on you all debts owing or accruing from you to the above-named primary debtor, are attached, and if you pay the same otherwise than into court, you will be liable to re-pay it in case the court so orders.

No. 9. In the absence of any notice of such defence or set-off the judge may in his discretion give judgment against you or either of you.

If the debt sought to be garnished is for wages or salary add as follows:—

The debt alleged to be due by the primary debtor to the primary creditor was (or was not as the case may be) incurred for board or lodging.

And when the primary debtor is unmarried and has no family depending upon him for support, add

The primary debtor is an unmarried person having no family depending upon him for support

No. 10. The primary debtor resides at the _____ of _____, in the Province of Ontario, and his occupation in the service of the garnishees is that of an engine driver (or as the case may be) on the railway of the garnishees (insert name of company) and is occupied as such on said railway between the cities of Toronto and Hamilton (or as the case may be).

R.S.O. 1914, c. 63, Form 4.

FORM 5.

(Section 165.)

EXECUTION AGAINST GOODS.

No.

A.D. 19 _____,

In the _____
District of _____

Division Court of the _____ County or

Between A. B., Plaintiff,

and

C. D., Defendant.

Whereas on _____ day of _____ A.D. 19 _____, the
the _____ for _____ recovered in the said Court judgment against
dollars for costs which remains unsatisfied (when the judgment has been revived, add, "and on the _____ day of
A.D. 19 _____, the said judgment was duly revived.") You are
hereby required to levy of the goods and chattels of the _____
in the said County or District _____ (not exempt from execution)
the said moneys amounting together to the sum of _____
dollars and interest thereon at the rate of five per centum per annum
from the _____ day of _____ A.D. 19 _____, and your lawful fees
so that you may have the same immediately after the execution
hereof and pay over to the Clerk of this Court for the _____.

Given under seal of the Court, this _____ day of _____
A.D. 19 _____.

X. Y.,
Clerk.

To V. W.

Bailiff of said Court.

Judgment\$

Interest\$

Subsequent costs

This execution

Levy the sum of\$ _____,
and your lawful fees upon this precept.

R.S.O. 1914, c. 63, Form 5.

FORM 6.

(Section 174.)

EXECUTION AGAINST LANDS.

In the
District of

Division Court of the

County or

Between A. B., Plaintiff,
and

C. D., Defendant.

Whereas, on the day of , A.D. 19 , the plaintiff recovered in the said Court, judgment against the defendant for \$ for debt, and \$ for costs of suit, which remain unsatisfied (*when judgment has been revived add* "and on the day of , A.D. 19 , the said judgment was duly revived.") You are hereby required to levy of the lands and tenements of the defendant in the said county, the said moneys, amounting together to the sum of \$ and interest thereon at the rate of five per centum per annum, from the day of A.D. 19 , together with your own fees, poundage and incidental expenses; so that you may have the same immediately after the execution hereof, and pay the same over to the Clerk of this Court for the plaintiff.

Given under the seal of the Court, this day of , A.D. 19 .

Z. Y.,
Clerk.

To V. W.,
Sheriff of the

County or District of

R.S.O. 1914, c. 63, Form 6.